

An Investigation of allegations on Dingli Interpretation Centre

Report by the
Auditor General
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Dingli Interpretation Centre

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List of Abbreviations

AEI	Area of Ecological Importance
CEO	Chief Executive Officer
CoL	Commissioner of Land
DCC	Development Control Commission
DG	Director General
DLG	Department of Local Government
EU	European Union
EAFRD	European Agricultural Fund for Rural Development
ERDF	European Regional Development Fund
FID	Financial Investigation Directorate
GPD	Government Property Division
IAID	Internal Audit and Investigations Department
LC	Local Council
LPG	Liquefied Petroleum Gas
MEPA	Malta Environment and Planning Authority
MEAE	Ministry for European Affairs and Equality
MTA	Malta Tourism Authority
NAO	National Audit Office
NHAC	Natural Heritage Advisory Committee
OLAF	European Anti-Fraud Office
PA	Planning Authority
PCAC	Permanent Commission Against Corruption
PPCD	Planning and Priorities Coordination Division
TPCC	Tourism Policy Compliance Certificate
VAT	Value Added Tax

Executive Summary

Introduction

1. On 27 January 2016, the National Audit Office (NAO) received a letter from a private individual, alleging collusion involving Governmental officials so that public property handed over to the Dingli Local Council (LC) for Interpretation Centre purposes would be transformed into a catering establishment. Moreover, the letter also referred to various irregularities and shortcomings in administrative procedures adopted by various Governmental institutions.
2. The key stages of the evolution of the Dingli Interpretation Centre included the transfer of Government owned land from the Government Property Division (GPD)¹ to the Dingli LC. The latter subsequently sub-leased the premises to a third party, La Pinta Ltd, following a call for tenders. In accordance with the provisions of the sub-lease Agreement, Dingli LC, applied for a Full Development Permit and subsequently for a minor amendment. Following the Malta Environmental and Planning Authority (MEPA) approvals, La Pinta Ltd also obtained a Malta Tourism Authority (MTA) catering licence.
3. Against this backdrop, this Investigation sought to determine whether:
 - a. any relevant contracts, permits and licences relating to the site were issued fairly and according to applicable regulations;
 - b. current site use is conformant with the issued contracts, permits and licences;
 - c. European Union (EU) funds granted to La Pinta Ltd for the completion of the project were justly obtained and utilised; and
 - d. various Government departments and authorities adhered to legislation in force and treated the case under review fairly and similar to other cases.
4. At the outset, the NAO notes that this Investigation did not elicit any evidence of collusion between the officials of the Dingli LC and La Pinta Ltd or any abuse of power by the former. Moreover, La Pinta Ltd is operating the Dingli Interpretation Centre in line with the MEPA permit issued in 2010. A number of events are organised at this Centre in collaboration with the Dingli LC, other Governmental institutions as well as other entities. However, this Investigation noted a number of administrative shortcomings, which raise governance-related concerns as outlined in this Executive summary and the Report proper.

¹ On 3 February 2017, the Lands Authority has been set up by virtue of the Lands Authority Act Cap 563 and the full powers previously held by the Commissioner of Lands within the Government Property Division were assumed.

Devolution of Land to the Dingli Local Council

5. The site at Tal-Veċċa was eligible for devolution in accordance with Government policy as stipulated in Memo 25 of 1999. The granting of the devolution and eventual authorisation of sub-letting of this site to third parties complied with legal requirements with the exception that the Devolution Agreement did not specify the permissible use of the site and Dingli LC sought authorisation for the sub-lease post facto. Nonetheless, this Investigation established that GPD's eventual approval of sub-letting embraced reasonableness-oriented criteria, as set by the NAO.
6. This case revealed certain policy gaps prevailing in the devolution of public land involving sites' use and sub-letting of devolved sites. Specific to the case there were a number of administrative shortcomings including the post-facto authorisation of sub-letting the devolved land to third parties and the failure to specify allowed site use in the Devolution Agreement.

The Tendering process

7. This Investigation was primarily concerned with the second call for tenders issued by the Dingli LC for the establishment of an interpretation centre due to the withdrawal of the successful bidder from the first call of the project. This Investigation did not elicit any evidence to support allegations of collusion and/or insider information. On the other hand, the chronology of events, to varying degrees, questions the administrative practices employed with respect to this call for tender.
8. A point of concern arises as the tender advert and documents did not refer to the commercial element of the project, despite the fact that the Dingli Local Council anticipated that this was necessary to ensure project sustainability.
9. The tender notice and brief also omitted references to the possibility of extending the sub-lease Agreement in the eventuality that GPD extends the Devolution Agreement with the Dingli LC. This is considered an issue since the sub-lease Agreement includes a provision for such an extension. This omission may have potentially restricted competition.
10. The documentation received at NAO alleged insider information as La Pinta Ltd, the Company that submitted the sole and subsequently the winning bid, was registered with the Malta Financial Services Authority three days before the issue of the notice for the call for tenders. This Investigation did not elicit any evidence which suggests that the timing of setting up La Pinta Ltd was due to insider information. Moreover, it established that there was ample information available within the public domain to enable deduction that a call for tenders from Dingli LC was to be issued.

Sub-lease Agreement

11. This Investigation revealed that the sub-lease Agreement between the Dingli LC and La Pinta Ltd does not adequately cater for the transfer of risks and other eventualities between the contracted parties. The Agreement omits, or does not adequately define, a number of clauses considered to represent best practices. These mainly relate to project duration, termination arrangements and project deliverables. Such omissions, to varying degrees, may compromise Government's interests.
12. Dingli LC agreed with La Pinta Ltd an annual rate of Lm20 during the tendering process. This Investigation considers the Lm20 annual sub-lease rate as nominal as it is not reflective of market prices. Furthermore, it does not equate with the annual rent of Lm100 that the Dingli LC pays to GPD with respect to the devolution of the land in question. Dingli LC countered that given the goodwill and '*benefikati*' generated through this project, when the current lease Agreement expires, the Local Council will be in a better position to negotiate a significantly higher annual sub-lease rate. Moreover, if the lease is not extended Government would become the beneficiary of all immovable property on the devolved site.

MEPA Permits

13. On 10 January 2005 and 20 January 2010, MEPA approved the Outline and Full Development Permits in relation to the site under Investigation. This development was presented as an integral part of the Dingli Heritage Trail – described as a number of interlinked projects aimed at the enhancement and enjoyment of the archaeological, historical, landscape and scenic values of Dingli and its surroundings. The site proposed for development comprised two Grade 2 listed buildings and pertained to the Natura 2000 network. The MEPA Outline Development Permit excluded catering facilities on site.
14. This Investigation's concern relates to the anomalous situation whereby the Development Control Commission documentation shows that, as noted in the Outline Development stage, Class 6 activities, that is the provision of food and drink through a bar, gelateria or restaurant were prohibited. On the other hand, the same board approved a Full Development Permit, which allowed food and drink to be served at the Interpretation Centre as an ancillary activity. In meetings with the NAO, Chair Development Control Commission (DCC) explained this variance as an oversight, and that the Board was under the impression that the permit issued reflected the discussions therein, and therefore excluded catering on site. Irrespective of this, the MEPA permit issued is the legally binding document, which document allows catering facilities on site in the areas where the approved project plans did not identify a specific use. Consequently, current use of site, that is, as both an Interpretation Centre and restaurant, is conformant with the Full Development Permit issued.
15. This Investigation did not uncover any evidence to suggest that this process was subject to fraud and / or corruption. On an administrative level, however, work practices, communication

and coordination weaknesses together with the lack of standardised terminology on the part of MEPA contributed to the uncertainty over the permit issued. This Investigation has not elicited evidence to explain the variance between the DCC's intention of the project and the actual Full Development Permit issued other than that of the Chair DCC who classified this incongruence as an oversight.

MTA Catering Licence

16. Ambiguities in the Full Development Permit conditions influenced the period taken for MTA to issue a catering licence to La Pinta Ltd for a second-class snack-bar. This also influenced the MTA licence condition whereby the serving of food and drinks was initially restricted to 22 square metres.
17. In 2016, MEPA informed MTA that from a Full Development Permit point of view, the premises were allowed to operate as an Interpretation Centre and also serve food on site. In this respect, these premises could also operate as a restaurant. The tables and chairs could be placed in any part of the premises, which was not identified as having a specific use in the MEPA-approved plans, and that there were no limitations on the amount of tables and chairs, nor the type and quality of food served on site. Following this MEPA direction, the MTA withdrew its restriction on the area for tables and chairs. Consequently, current use conforms to the MTA catering licence.

Other Matters

18. Interviews under oath did not uncover any evidence that the Mayor Dingli LC (2005 – 2013) had a personal interest and was in receipt of around €2,000 monthly from the Interpretation Centre activities, as alleged. Interviewees were not in possession of any evidence to substantiate these allegations.
19. This Investigation concluded that, notwithstanding a number of minor shortcomings with respect to the administrative processes, EU funds granted to La Pinta Ltd in respect of the 'D Cliffs Interpretation Centre' were justly obtained and utilised.

Overall Conclusions

20. The wide-ranging allegations received at NAO mainly centred on the hypothesis that the Mayor Dingli LC (2005 – 2013) used his influence to expedite and facilitate the attainment of operating permits and that he had a personal interest in the Dingli Interpretation Centre. Moreover, the allegations raised the point that this Centre, located on a prime site pertaining to the Natura 2000 network, was not operating according to planning permits. This state of affairs, it was alleged, also breached conditions relating to the granting of EU Funds. This Investigation did not uncover or receive evidence to corroborate allegations of fraud, corruption, insider

information or conflict of interest from any of the officials or parties involved in the processes to establish an Interpretation Centre at Dingli.

21. Nonetheless, this Investigation revealed a number of administrative weaknesses throughout the key stages leading up to the setting up of the Interpretation Centre. Shortcomings included an absence of information on the commercial element related to the project at the tendering stage, post-facto authorisations and inadequate contract clauses within the sub-lease Agreement and value for money concerns. Policy gaps, which do not appropriately regulate devolution processes, were also noted.
22. This Investigation could not comprehend the variance between the DCC Board's intention to severely restrict the provision of food and drink on site to the use of vending machines and the planning permit issued which allowed the site to operate as a fully-fledged restaurant. Chair DCC termed these circumstances as an oversight. Such a state of affairs would indicate serious shortcomings in work processes as well as weak communication and coordination within this Authority.
23. Individually or collectively, the shortcomings noted impinge on the reputation of the institutions involved in this Investigation. These weaknesses also question the effectiveness of governance mechanisms as this Investigation raised concerns relating to principles of consistency, transparency, accountability and value for money.

Chapter 1

Terms of Reference

1.1 Introduction

- 1.1.1. On 27 January 2016, the National Audit Office (NAO) received a letter from a private individual, wherein it was alleged that collusion, fraud and irregularities characterised the setting up and current use of the Dingli Interpretation Centre. The letter highlighted that although public land was granted to third parties for the purpose of setting up an Interpretation Centre, the site was actually transformed into a catering establishment.
- 1.1.2. The main aim of this Chapter is to provide the context within which the NAO carried out this Investigation. To this effect, the next Sections within this Chapter highlight the following:
- An overview of the allegations received at the NAO;
 - The Investigation scope;
 - The Investigation methodology; and
 - The Report structure.

1.2 Allegations and implications

- 1.2.1. During the period July to November 2015, this Office, was kept in copy to submissions to Governmental Entities including the Department of Local Government (DLG) and the Malta Environment and Planning Authority (MEPA) highlighting various allegations regarding the Dingli Interpretation Centre². However, a formal request for Investigation was submitted to the NAO on 27 January 2016. This document was entitled *'Request for formal investigation into facts, actions, inactions and motives in case of suspected collusion, fraud, irregularities, corruption and other illegal activity with the involvement of Parliamentary Secretary and/or Dingli local council and/or MEPA relative to use of public property and public EU funds: Dingli Interpretation Centre and the so called Dingli Heritage Trail'*.
- 1.2.2. The case was also referred to the Ombudsman, the Commissioner for the Environment and Planning and the Permanent Commission Against Corruption (PCAC). Separate requests were formulated according to the competence of each authority, copies of which were also attached and forwarded to this Office. A similar Investigation request was made to the European Anti-

³ During 2016, MEPA demerged into two authorities namely the Environment and Resources Authority and the Planning Authority (PA).

Fraud Office (OLAF). A copy of the letter and report addressed to NAO were also forwarded to the media.

1.2.3. The letter received at NAO referred to the setting up of the Dingli Interpretation Centre. In this regard, the key stages of the evolvment of the Dingli Interpretation Centre relate to the property being transferred from the Government Property Division (GPD)³ to the Dingli Local Council (LC). The latter subsequently sub-leased the premises to a third party (La Pinta Ltd). In accordance with the provisions of the sub-lease Agreement, Dingli LC, applied for a Full Development Permit and subsequently for a minor amendment. Following these MEPA approvals, La Pinta Ltd also applied for a Malta Tourism Authority (MTA) licence. The main issue raised by the allegations related to collusion involving Governmental officials so that public property handed over to the Dingli LC for Interpretation Centre purposes would be transformed into a catering establishment. Moreover, it also referred to various irregularities and shortcomings in administrative procedures adopted by the various Governmental institutions. The author of these allegations presented a comprehensive dossier, including publicly available documentation.

1.2.4. However, this Investigation did not elicit any evidence of collusion between the officials of the Dingli LC and La Pinta Ltd or any abuse of power by the former. Moreover, La Pinta Ltd is operating the Dingli Interpretation Centre in line with the MEPA permit issued in 2010. A number of events are organised at this Centre in collaboration with the Dingli LC, other Governmental institutions as well as other entities. This Investigation, however, noted a number of administrative shortcomings, which will be discussed in the ensuing Chapters of this Report.

1.3 Investigation scope

1.3.1. This Investigation sought to determine if there was collusion between various Government officials so that the site will be transformed from an Interpretation Centre into a catering establishment. This review also sought to establish the extent to which there was compliance with prevailing laws, regulations and procedures related to the establishment of the Dingli Interpretation Centre. To this end, the audit's objectives seek to determine whether:

- a. any relevant contracts, permits and licenses relating to the site were issued fairly and according to applicable regulations;
- b. current site use is conformant with the issued contracts, permits and licenses;
- c. EU funds granted to La Pinta Ltd for the completion of the project were justly obtained and utilised; and
- d. various Government departments and authorities adhered to legislation in force and treated the case under review fairly and similar to other cases.

³ On 3 February 2017, the Lands Authority was set up by virtue of the Lands Authority Act Chapter 563 and the full powers previously held by the Commissioner of Lands within the Government Property Division were assumed.

1.3.2. The Investigation undertaken by this Office was restricted on two counts. The NAO's remit does not extend to investigating a private company or persons, and their financial accounts. Secondly, the Investigation focused solely on the Dingli Interpretation Centre and excluded the Heritage Trail. The latter was considered as secondary to the main scope of the allegations and in addition, this Trail was subject to various inspections and audits by other regulatory authorities.

1.4 Investigation methodology

1.4.1. The NAO carried out this Investigation in accordance with Para 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 (XVI of 1997) and in terms of NAO policies and practices. The methodological approach's main aim was to enable corroboration of evidence collected and entailed the following:

- a. **Documentation review** - The NAO reviewed the allegations submitted by a private individual to this Office. This Office also examined all case-related documentation retained by DLG, MEPA, MTA, the Dingli LC, GPD and the Planning and Priorities Coordination Division (PPCD).
- b. **Witness testimony** – The NAO conducted a number of semi-structured interviews with both incumbent and former officials and third parties who were directly referred to in official documentation. Due to the extensive number of persons involved, questioning took place through formal interviews or by email. The criteria to carry out questioning through an interview or an email was based on the degree to which the individual was key to the setting up of the Dingli Interpretation Centre. In this regard, 18 formal interviews were conducted under oath while another 10 witnesses answered questions via email. Moreover, informal interviews were held with MTA officers, to obtain a better understanding of the MTA licensing and enforcement process as well as the specifics of this case. All interviews held were recorded and minuted by the NAO and copies of the minutes were submitted to the interviewees involved, who were requested to endorse the minutes and, if required, submit clarifications. Public officers cited throughout the Report are referred to by their designation at the time reported on. Clarifications were also sought from experts in specific fields and other public officials in respect of certain aspects, which necessitated clarifications, by this Office.

1.4.2. In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were evaluated, investigated and objectively reported on. The team sought to establish facts based solely and exclusively on evidence at its disposal.

1.5 Report structure

1.5.1. Following this introductory Chapter, the Report proceeds as follows:

- Chapter 2 analyses the devolution process undertaken by GPD in granting the site in question to the Dingli LC.
- Chapter 3 evaluates the tender and selection procedure adopted by the Dingli LC to sub-lease the site granted by GPD to a third party for the setting up and execution of an Interpretation Centre.
- Chapter 4 discusses the degree to which the sub-lease Agreement entered into between the Dingli LC and La Pinta Ltd safeguarded Government's interests. Furthermore, it analyses the degree to which La Pinta Ltd is compliant with the lease Agreement entered into with the Council.
- Chapter 5 assesses whether the MEPA permit issued and the subsequent minor amendment procedure were conformant with applicable legislation. Moreover, it also analyses whether the current site use is conformant with the MEPA permit.
- Chapter 6 determines whether the licence issued by MTA was conformant with the MEPA permit.
- Chapter 7 discusses other matters, which were reviewed and analysed by this Office including the degree to which EU funds granted in respect of the Dingli Interpretation Centre were justly obtained and utilised and the allegations made that the Mayor Dingli LC (2005 – 2013) has a personal interest in La Pinta Ltd venture.

1.5.2. The overall conclusions are included in the Report's Executive Summary on pages 6 to 10.

Chapter 2

Devolution of Land to Dingli Local Council

2.1 Introduction

- 2.1.1. The National Audit Office (NAO) sought to establish whether the granting of the site by the Government Property Division (GPD) to the Dingli Local Council (LC) was conformant with the applicable policy on devolution. Additionally, this Investigation assessed the extent to which the current site use conformed to the Agreement for the site devolution, entered into by the GPD and the Dingli LC, dated 17 May 2007.
- 2.1.2. This Investigation concluded that the devolution of the site in question to the Dingli LC was regular. Nonetheless, various policy and procedural lacunae draw varying degrees of subjectivity in the devolution process managed by GPD.
- 2.1.3. Against this context, this Chapter discusses the following:
- The policy, criteria and practices in place governing site devolution;
 - The extent to which the application submitted by the Dingli LC for land devolution presented an accurate overview of the intended project on site;
 - The processing of the devolution application and whether the respective sub-letting authorisations complied with GPD policies and practices; and
 - The degree to which the Devolution Agreement entered into between the GPD and the Dingli LC embraced generally accepted practices and was conducive to the attainment of the devolution objectives.

2.2 Devolution policy, criteria and practices

- 2.2.1. The devolution of land to local councils is regulated through two main elements. Firstly, the overarching policy, issued in 1999 aimed to promote local devolution. Secondly, there are the GPD administrative processes and legal framework, which regulate the transfer of land to local councils.
- 2.2.2. Memo 25 of 1999, issued by the Director Department of Local Government (DLG) to all mayors and executive secretaries outlines that Government policy for the granting of public land administration to local councils was part of the process of local devolution. The Memo lists the

eligibility criteria, which must be fulfilled in cases of devolution. These include that the site in question must be:

- a. abandoned or not developed;
- b. misused or has the potential for better development; or
- c. was in some way related with the LC function, as per sub-article 33(1) of the 1993 LCs Act.

2.2.3. This Memo stipulates that LCs that were interested in administering a public property within their locality had to apply by completing the required application form, and forwarding it, together with any necessary documentation, to the DLG. The application form solicited information on the proposed use of the property, its current state together with the proposed property administration, its proposed financing and the LC's financial standing. DLG was to assess each application according to the merits of the project, particularly as the Memo did not stipulate any provisions regulating the use of the devolved site and sub-letting conditions. These circumstances are deemed not to appropriately fully safeguard Government's interests.

2.2.4. The Memo also envisages the involvement of the Department Estate Management within GPD to establish whether the proposed property is available for devolvement. Following this Department's intervention, the administration of public property by the LC was to be given a legal title through a contract between the Local Council applying for devolution and the Land Department within GPD. However, the Memo in question does not specify which uses are allowed on devolved sites. Subsequently, the GPD is also required to assess the application against its own internal criteria and practices. GPD officials corroborated this fact during meetings with NAO.

2.3 Devolution Application

2.3.1. In its devolution application, dated 16 May 2002, the Mayor Dingli LC (1999–2005) and Executive Secretary Dingli LC, indicated that the proposed use of the site was that of a tourist information, catering and public convenience facilities. The application referred to the involvement of third parties, indicating that part of the project, specifically the cafeteria, was to be leased out to a private entity. Subsequently, DLG informed GPD that the Dingli LC submitted an application and indicated that the latter's intention was to sub-lease the proposed cafeteria. On 17 May 2006, CoL GPD and the Mayor Dingli LC (1999 – 2005), as well as the Executive Secretary Dingli LC, entered into a lease Agreement for the administration and use of the Government property at tal-Veċċa, limits of Dingli.

2.3.2. Subsequently, following a call for tender, on 27 November 2007, the Dingli LC entered into a 13-year sub-lease Agreement with La Pinta Ltd for a divided portion of the devolved site. This Agreement stipulated that La Pinta Ltd was entrusted to establish and manage an Interpretation Centre as well as catering and public convenience facilities.

- 2.3.3. While it is evident that the application referred only to a cafeteria rather than a restaurant, this investigation does not contend that this shortcoming in communicating a precise account of the project was intentional. While Dingli LC considered project sustainability at the outset, the scale and type of the activities that were to render the project feasible, through a commercial element, became increasingly apparent over time. Such a situation, however, implies that the Dingli LC did not carry out sufficient feasibility studies prior to submitting the application to ensure that their application reflected more accurately the project composition.
- 2.3.4. It can be argued that the circumstances discussed in the preceding paragraph could have influenced GPD proceedings relating to this case in terms of whether to devolve the land to the Dingli LC, issue itself a direct call for tenders as well as in the determination of the annual lease value. Despite its merits, such reasoning must be considered against the social and cultural purposes associated with the devolution of this land and that a degree of commercial element was necessary to ensure project sustainability.

2.4 GPD's processing of Dingli LC's Devolution Application

- 2.4.1. GPD is responsible for the administration of all public land, and consequently is a major player in the devolution process. To this effect, GPD is responsible for processing devolution applications. To varying degrees, the procedures involve both the Estates Management Department and the Land Department within this Division. The former verifies that the land is available for devolution, assesses whether the land can be used for the proposed project, and prepares the property drawing. The latter engages in the legal aspects concerning the transfer of land. Ultimately, the Director General (DG) GPD grants approval for devolutions.
- 2.4.2. Despite the material values associated with land, GPD does not have documented internal policies to support the land devolution legal framework. The NAO assessed whether this devolution adhered to the provisions of Memo 25 of 1999 concerning devolution of land to local councils and the extent to which GPD processed this application in accordance with the prevailing practices within the Division as defined by GPD officials.
- 2.4.3. The NAO review raised the following issues:
- a. The devolution of the land in question complied with the provisions of Memo 25 of 1999 issued by the DLG. The application fulfilled all the devolution criteria included therein as the site in question was abandoned and not developed, had the potential for better development and the proposed function, that is of an Interpretation Centre, clearly falls within the remit of the Dingli LC.
 - b. DG GPD also confirmed devolution eligibility on the basis that the activity on site is not solely commercial, insofar as there is a lecture room on site and the project enables the organisation of tours around Dingli as well as promotes and sells local products. The foregoing implies that GPD did not need to issue a call for tenders, as the site was not transferred

solely for commercial purposes. CoL noted that if the Dingli site was sub-let completely and managed by third parties, so long as the site was used as an Interpretation Centre, and therefore it had educational objectives, then this site was eligible for devolution. He also noted that a degree of commercial activity is required to ascertain project feasibility. On the other hand, the CoL, asserted that had he been aware that the site would be used for the purpose of a restaurant, then the devolution request would not have been processed, and at best, the GPD would have issued a call for tenders.

2.5 Devolution Agreement Limitations

2.5.1. This Investigation revealed that the Devolution Agreement between GPD and the Dingli LC did not appropriately safeguard the former's interest with respect to three main elements. Firstly, the Agreement does not clearly define the permitted uses of the site. Secondly, the rental value of the site is considered minimal. Thirdly, and as noted earlier in this Chapter, the Agreement does not provide for the proportion of land that can be sub-leased by the Dingli LC to third parties.

2.5.2. **Site use** - Contrary to the template agreement forwarded by GPD, as well as other existing agreements reviewed by this Office, GPD failed to include a contractual clause in the Devolution Agreement limiting site use. In this respect, GPD has allowed the Dingli LC unrestricted use of the property. Consequently, site use can never be in breach of the Devolution Agreement.

The Devolution Agreement between GPD and the Dingli LC stipulates that the latter could only undertake additions and improvements to the property as long as these respect the spirit of the use of the property. The Agreement, however, did not, at any point indicate the prescribed use of the property.

In this respect, the NAO requested the Legal Department within GPD to forward a template lease agreement. The NAO compared this template agreement, as well as other existing agreements, with the Devolution Agreement signed on 17 May 2006 with the Dingli LC. The NAO noted that contrary to the Agreement entered into with the Dingli LC on 17 May 2006, all the other agreements included a provision, right after the specification of the lease duration and the rent payable, indicating the intended use of the property. The Devolution Agreement did not include a clause regarding site use, and by consequence, allowed the Dingli LC unrestricted use of the property.

During his interview with the NAO, the Commissioner of Land (CoL) indicated that he was previously unaware that the lease Agreement did not include a clause that specified the allowed site use, and that in fact this omission was an oversight. The CoL however emphasised the fact that the LC had applied for the devolution and was granted the site on the basis of the site being used as an Interpretation Centre, and that therefore site use was to be limited to that specified in the application form.

In NAO's opinion, what is valid at law is in effect that stipulated in the Contract, rather than that indicated in the application form. To this effect, the site use can never be in breach of the Devolution Agreement since this Contract does not stipulate or impose any restrictions on its use.

2.5.3. Rent value – This Investigation has reservations regarding whether the annual rental value set by GPD constituted value for money. The Devolution Agreement between GPD and Dingli LC stipulated an annual rent of Lm100 (€233). This amount is lower than that initially proposed by GPD, that is, Lm700 (€1,631) per annum.

On 22 October 2001, the Dingli LC were informed by the GPD that the rental value for the site would be around Lm700 per annum. The Department of Local Government contested this amount. However, DG GPD confirmed this rental value on 29 January 2002, having taken into consideration the semi-commercial use of the site. Following the issuance of the Outline Development Permit by MEPA, in 2005, the DG GPD requested Architect GPD to estimate the rental value for the property. The NAO noted that no information about the proposed use of the site was provided in this minute. However, previous instructions forwarded to him for the drafting of a PD plan made reference to previous minutes, which provided a description of the proposed site use. In a minute dated 5 December 2005, the Architect GPD determined the rental value of the site, having a total area of 676 square metres, to be Lm100 per annum. In the minute on file, Architect GPD indicated that the rental value was determined after consideration of all relevant factors, including the fact that the site was being devolved to the Dingli LC for the erection of an Interpretation Centre. The difference in the architect's valuation is questionable.

When queried regarding the valuation, Architect GPD indicated to the NAO that the relevant factors he took into consideration when determining the lease amount were the following:

- a. The dimensions of the site;
- b. The fact that the property was going to be devolved to a LC for use as an Interpretative Centre, and that it therefore had cultural and touristic aims;
- c. The state of repair of existing structures;
- d. The fact that most of the envisaged structures were still to be constructed;
- e. Typical rates applied for the devolution of property to local councils; and
- f. The fact that there was a third party servitude on site.

Architect GPD explained that he did not take into consideration the semi-commercial nature of the proposed activities on site as it was normal practice for the GPD to include a clause in the Devolution Agreement that secured GPD a share of the rent accrued from commercial activities.

When asked by this Office to value the site taking into consideration the semi-commercial nature of the proposed site use, Architect GPD quoted a rental value of €2,500 per annum.

Architect GPD also noted that this valuation was carried out with the benefit of hindsight. This estimate was arrived at by considering the Full Development Permit issued and the limited commercial potential of the site. Architect GPD also considered the previous GPD valuation of Lm700, which he considered to be a commercial valuation. This Office however notes that the Lm700 valuation was most likely for recreational use, as indicated by the Principal GPD in her meeting with the NAO.

This Investigation believes that the Architect's consideration of the cultural and touristic purpose of the project in determining the rental value is somewhat at odds with the GPD's initial stance⁴ that devolution would be permissible so long as the Dingli LC was willing to pay the actual rental value of the property. Moreover, this rate (Lm100) fails to take into consideration the commercial nature of the project. In this respect, the NAO opines that GPD officials did not attain value for money for the site. The argument that the lease amount pertaining to the Devolution Agreement need not take into consideration the commercial element of the project, since GPD could increase the lease amount by requesting a percentage of any sub-lease amount, is somewhat questionable. The commercial element may or may not always involve a sub-lease. In other cases including a sub-lease, such as the one under Investigation, the rental value is limited by the sub-lease amount, which amount may in itself be minimal and not constitute value for money.

On enquiry, GPD officials presented varying positions as to whether the Lm100 annual rent constitutes value for money. The Principal GPD asserted that in the case of LCs the rental value was lower than the market rented value of the property, which in her opinion was Lm700. In this respect, she noted that the lease amount was to a certain extent subsidised. This reflected the consideration that LCs are an extension of Government and have limited budgets. The Principal GPD however pointed out that the lease Agreement provided for the possible revision of the rental value in the form of a percentage payment of the rent accrued from the property, in the event that a sub-lease was entered into. The DG GPD did not comment on the appropriateness of the lease amount, though he also made reference to the possibility of an increase in the rent in the event of a sub-lease. The CoL on the other hand stated that since a GPD architect had determined the lease amount, then he considered it just, fair and reasonable.

- 2.5.4. Sub-letting** - The GPD's contractual clause regulating sub-leasing is weak, prohibiting only the sub-lease of the whole devolved area. The standard contractual clause, in principle, aims to eliminate situations where the devolved land is sub-let in its entirety to third parties. This implies that the clause in the Agreement does not specifically indicate the proportion of land that is to be sub-let and that to be retained by the Local Council. The Agreement, however, is not deemed to mitigate against cases where the intention of the LC is to sub-let the majority of the site as in this case, or to leave the portion of the site not sub-let unutilised by the LC. The CoL corroborated NAO's concern that this clause is not sufficiently robust to control the sub-letting of devolved land to Local Councils.

⁴ On 22 October 2001, GPD indicated to Dingli LC that the former was open to considering the devolution of the site to the latter, on condition that the Council was prepared to pay the actual value of the property.

2.6 GPD's authorisation of subletting between Dingli LC and third parties

- 2.6.1. The Devolution Agreement dated 17 May 2006, between GPD and Dingli LC clearly stipulated that the latter is to seek CoL's consent prior to any instance of sub-lease. However, the GPD does not have documented policies defining the parameters of sub-letting. Such circumstances introduce processing subjectivity and encroach on the principle of administrative consistency.
- 2.6.2. In this case, the main point of contention arises as CoL GPD can authorise sub-letting on condition that the Local Council retains a portion of the devolved site. The Devolution Agreement refers to such criteria but this document does not quantify the proportion of land that the Local Council is to retain. Furthermore, the absence of documented policies and criteria at GPD is not conducive to optimise the use of government-owned land, which was subject to sub-letting to third parties following devolution. This situation would be particularly evident in the event that local councils retain a proportion of land merely to fulfill this contractual condition.
- 2.6.3. Unclear and undocumented policy at GPD concerning devolved land to local councils necessitated that the NAO establishes criteria against which to assess the legal compliance, feasibility of sub-letting and the administrative timeliness in the case under Investigation. To this effect, the NAO sought to determine whether sub-letting complied with legal provisions, namely Chapter 268.⁵ On the other hand, feasibility criteria entailed the Dingli LC being in a position to provide Interpretation Centre services itself through the devolved land effectively and sustainably. The criteria pertaining to administrative timeliness relates to the expedient adherence of procedural requirements by the parties concerned. Within this context, the Investigation revealed the following:
- a. **Legal compliance** - This Investigation established that sub-letting did not breach the legal provisions referred to in the preceding paragraph.
 - b. **Feasibility** - Interviews under oath with the various parties involved in this case and a review of documentation relating to the range and investment cost of services provided showed that sub-letting was a more practical alternative than the Local Council running the Interpretation Centre itself. This assertion considers that Dingli LC had neither the required funds to develop the Interpretation Centre nor the resources or expertise to manage it. In the circumstances, GPD's authorisation to permit the sub-letting of the devolved land appropriately considered the project sustainability.
 - c. **Timeliness** - The Dingli LC did not request the prior authorisation of the Commissioner of Land (CoL) for the sub-lease, consequently breaching contractual conditions. The Council sought CoL GPD authorisation for the sub-lease on 29 May 2009, when the former signed an agreement with third parties on 27 November 2007.

⁵ Chapter 268 was repealed and replaced by ACT XVII of 2017.

The position was regularised on 4 June 2009 when CoL granted post-facto authorisation for the Dingli LC request to sublet the devolved site to third parties. This authorisation was granted in conformity with Clause 12a of the 17 May 2006 Agreement between the Dingli LC and the GPD, which stated that *“The lessee may subject to the provisions of the Local Councils Act (Act. No. XV of 1993) and with the prior written consent of the lessor sub lease parts of the property let provided this is done in virtue of section 3 (l) (a) of the Disposal of Government Land Act (Cap. 268). Such consent shall be requested beforehand on each specific occasion and it will be at the absolute discretion of the Director Land to grant or refuse such consent.”*

The CoL indicated that he had granted authorisation subject to the sub-lease being conformant with the applicable legislation. He explained that there was a precedent of post-facto authorisations, adding that GPD also granted such authorisations to private owners seeking to be recognised as the new emphyteuta after the sale of the property.

This notwithstanding, this Office maintains that post-facto authorisations do not constitute good practice.

2.7 Conclusions

- 2.7.1. The discussion in this Chapter considered the various elements and stakeholders involved in the devolution of land, which the Dingli Local Council intended to use as an Interpretation Centre. The granting of the devolution and eventual authorisation of sub-letting of this land to third parties is deemed to comply with legal and policy requirements.
- 2.7.2. Site devolution fulfilled the criteria outlined in Government policy as stipulated by Memo 25 of 1999, particularly as the intended use of the site was in line with the functions of the Local Council. GPD’s approval of sub-letting also embraced reasonableness-oriented criteria set by the NAO. The foregoing supports the notion that the site in question was eligible for devolution and eventual sub-letting.
- 2.7.3. This case revealed certain policy gaps prevailing in devolution of public land involving sites’ use and sub-letting of devolved sites. Specific to the case there were a number of administrative shortcomings including the post-facto authorisation of sub-letting the devolved land to third parties and the failure to specify allowed site use in the Devolution Agreement.
- 2.7.4. The preceding two paragraphs project opposing situations. While the devolution and eventual subletting was regular, it fell well short of promoting good administrative practices. The next Chapter of this Report discusses the tendering procedures used by the Dingli LC to sub-lease the premises to third parties.

Chapter 3

The Tendering Process

3.1 Introduction

- 3.1.1. The Dingli Local Council (LC) issued two calls for tenders in connection with the Interpretation Centre Project on the devolved site. Tendering is a requisite of the Disposal of Government Land Act (Chapter 268) to sub-lease Government owned land, which has been devolved to Local Councils.
- 3.1.2. The first tender was not included in the scope of this Investigation as, for various reasons, it led the successful bidder to withdraw the offer. With respect to the second call for tenders, this Investigation raised reservations concerning the extent to which the published advert and tender document provided sufficient information of the project brief. Moreover, this Investigation identified some tender conditions that did not comply to the public procurement and related legislative framework as well as with certain procedures adopted by the tender adjudicating board. This Investigation considers that the annual sub-lease fee established during the tender adjudication did not reflect the true value of the site.
- 3.1.3. This Chapter discusses the degree to which the tender process embraced the principles of good governance. Within this context, the discussion herein mainly seeks to evaluate whether:
- the published advert and tender document relating to the second call for tenders provided sufficient information about the project brief;
 - tender conditions complied with the public procurement framework;
 - the establishment of La Pinta Ltd three days prior to the call for tenders implies insider information; and
 - the tender adjudication was fair.

3.2 First Call for Tenders

- 3.2.1. The Dingli LC's intention to develop an Interpretation Centre project through a joint venture with a private entity dates back to 2002 when the Local Council requested the Department of Local Government (DLG) to devolve land at tal-Veċċa, limits of Ħad-Dingli. The private entity

⁶ Chapter 268 has since been repealed. The disposal of Government owned land is now regulated by Act XVII of 2017.

was to be chosen following a public call for tenders, which was to be issued by the Dingli LC. Dingli Local Council minutes show that discussions regarding the nature of the partnership and the preparatory work for the issuance of a tender date back to November 2005. During the LC meetings held between November 2005 and July 2006, the Mayor Dingli LC (2005-2013) informed the Councillors that the selected bidder would be subject to the following conditions:

- a. the full Malta Environment and Planning Authority (MEPA) permit application was to be submitted within one month from tender adjudication;
- b. the MEPA application was to be submitted jointly with the Architect LC;
- c. the LC was to be given the ground floor level of the Centre for slideshows on the Dingli locality, exhibitions and any other purpose deemed necessary by the LC;
- d. the toilets of the Centre were to be accessible to the general public at all times;
- e. the tender was to be awarded for a period of 15 years, with the possibility of renewal in the eventuality that the Lands Department authorised a second lease period; and
- f. the contractor was to incur all expenses for the completion of the project, including professional and MEPA fees.

3.2.2. The Dingli LC issued a public call for tenders and by the stipulated deadline, set at 11 August 2006, only one valid offer had been submitted. This offer, of Lm150 (€349) per annum, put forward by the Dingli Heritage Partnership, was accepted by the LC during a meeting held on 17 August 2006. A letter of acceptance was forwarded to the Dingli Heritage Partnership on 23 August 2006, whereby they were requested to start preparation work to implement the project.

3.2.3. On 16 November 2006, the Dingli Heritage Partnership, wrote to the Dingli LC notifying the Council that the offer submitted previously by the Partnership, which by that time had been dissolved, was being withdrawn. On 28 November 2006, the LC agreed unanimously that the tender for the Interpretative Centre was to be re-issued. Given these events, this Investigation excluded the first tender from its scope.

3.3 Second Call for Tenders

3.3.1. The Dingli LC issued the second call for tenders on 5 October 2007, through a notice in the Government Gazette where the Local Council requested interested parties to collect the tender documents and submit sealed tenders for an Interpretation Centre by 29 October 2007. This Investigation assessed the extent to which this notice, together with the additional tender documentation available through the Dingli LC for a €58 fee, sufficiently outlined the project brief. The National Audit Office (NAO) adopted various evaluating criteria based on the expected functions and services to be provided through an Interpretation Centre as well as issues related to its sustainable management. Other evaluating criteria established for the purpose of this Investigation related to the facilities, which were to be provided through the Centre, as well as key conditions, which the operator would be required to comply with during the development and running of the Centre. Table 1 refers.

Table 1: Project brief information in published notices and tender documentation

Evaluating criteria	Government Gazette Notice	Additional documentation available from Dingli LC against a fee
Interpretation Centre:		
Dissemination of information about the Dingli locality through information material and merchandise	No	Yes
Opening hours	No	No
Project Sustainability:		
Contractual project duration	No	Yes
Parameters of commercial activities	No	No
Other facilitates:		
Public convenience to serve the Interpretation Centre and visitors to the area	No	Yes
Other conditions:		
Compliance with the Outline Development Permit	No	Yes
All expenses to develop the centre to be borne by the developer	No	Yes
All permits to be sought by the developer	No	Yes
Extension of the sub-lease Agreement	No	No
Project development timeline	No	Yes
Submission of bank guarantee	No	Yes

3.3.2. Table 1 shows that two of the audit criteria established to evaluate the completeness of the project brief presented by the Dingli LC at tender publication stage remained unattained. These relate to the opening hours of the Interpretation Centre and, more importantly, the parameters within which the developer could undertake commercial activities to sustain the Interpretation Centre as well as the possibility of extending the sub-lease Agreement. The former is considered a minor omission, which could be addressed through the sub-lease Agreement between the LC and third parties. On the other hand, the other two omissions are considered to increase the risk of influencing the level of interest for such a project.

3.3.3. As implied by the NAO established criteria, the tender advert and additional tender documentation did not provide sufficient information about what type and scale of commercial activity would be permissible for the developer. To this effect, if the Dingli LC intention was to have catering facilities on site, then this information should have been included in the tender documents. In this regard, the LC prior to the issue of the tender, subject to the eventual planning approval, discussed the availability and location of kitchen facilities on site as a key element of increasing the project attractiveness to prospective bidders.

3.3.4. The omission in the tender documents of the possibility of extending the sub-lease Agreement, in the eventuality that GPD extends the Devolution Agreement with the Dingli LC, is considered to have potentially restricted bidders from tendering. Such circumstances arise since bidders would not have sufficient information to make their own assessments on project feasibility and risk. This issue also impacts the terms and conditions of the sub-lease Agreement, which are discussed in Paragraph 4.2.3b.

3.4 La Pinta Ltd

3.4.1. La Pinta Ltd was registered with the Malta Financial Services Authority on 2 October 2007, that is, three days prior to the publication of the tender notice in the Government Gazette requesting sealed tenders in relation to the Dingli Interpretation Centre. The allegations received at NAO implied that such a fact implies collusion or insider information.

3.4.2. The NAO followed up this allegation through interviews under oath as well as seeking publicly available evidence that gave insights that the Dingli LC intended to reissue a call for tenders relating to the development of the devolved land at Tal-Veċċa.

3.4.3. The interviews under oath revealed that there were a number of factors, which could have alerted the eventual Director of La Pinta Ltd that, in the near future, the Dingli LC was to re issue a call for tenders for the development of the site under Investigation. Director La Pinta stated that the Mayor Dingli LC (1999 – 2005) approached and encouraged him to submit a bid. Although Director La Pinta Ltd could not recall whether such communication preceded the publication of the call for tenders, this encounter did not imply that he would be favoured in any way. Director La Pinta Ltd explained that this line of reasoning considers the fact that previously no one was interested in such a project, hence it was a known fact that the Local Council was going to re-issue the tender. Moreover, interviewees outlined that the locality of Dingli is a small community, where the local matters tend to be common knowledge.

3.4.4. The extent to which Director La Pinta Ltd was privy to insider information, however, has to be determined within the context of the following:

- a. The unsuccessful outcome of the first call for tenders was in itself an indicator that the Dingli LC could re issue this call. This assertion is given credence particularly as the devolved land at tal-Veċċa (which devolution was also in the public domain) remained undeveloped.
- b. At end 2006, the Dingli Local Council newsletter, *Żagħfran*, also published details of the first call for expressions of interest for a tourist centre, and noting that the LC was to re-issue a call for tenders in the following months.
- c. Director La Pinta Ltd stated in the bid submitted that he had been researching the site for a number of years with the intent of participating in such a venture. Moreover, under

oath the Director La Pinta Ltd stated that the Company was set up specifically for such a purpose.

3.4.5. The foregoing shows that there was ample information in the public domain to enable potential bidders to prepare groundwork in anticipation of a call for tenders. On the basis of the foregoing, this Office did not retrieve any evidence to corroborate allegations in this regard.

3.5 Call Adjudication

3.5.1. The tender was opened in the presence of Mayor Dingli LC (2005-2013), a Councillor Dingli LC and the Executive Secretary Dingli LC. Since the bid submitted by La Pinta Ltd failed to indicate the lease offer, the Council sought the legal opinion of the Lawyer Dingli LC who recommended that the Council establish a market-based estimate of the price of the tender and intimate the tenderer to accept it. The LC was to proceed with adjudication in the event that the tenderer accepted the estimated price proposed by the LC, or issue a fresh call if the proposal was refused.

3.5.2. Following the receipt of the lawyer's advice, on 13 November 2007, the Executive Secretary of the Dingli LC wrote to Director La Pinta Ltd asking him to pay the annual sum of Lm20, to allow the tender to be conformant with tendering legislation. The LC also requested that La Pinta Ltd carry out any required maintenance and cleaning of the public toilets, aid in the creation and distribution of the heritage trail leaflet and employ a person responsible for taking care of the Interpretation Centre. If the company accepted the conditions put forward it was to indicate its acceptance in writing by the end of the month and make contact with a notary of its choice for the signing of the contract.

3.5.3. The previous paragraph presents two scenarios. This Investigation acknowledges that the LC broadened its terms and conditions for the award of the tender. Nonetheless, even when considering the substantial costs involved in constructing and furnishing the premises and a guaranteed lease of 13 years, the annual sub-lease rate of Lm20 remains considerably below market rates. This assertion takes into account the following factors:

- a. The commercial element proposed in the project brief submitted by La Pinta Ltd;
- b. The sub-lease Agreement entered into between the Dingli LC and La Pinta Ltd, which contractual conditions specifically refer to the site's commercial element;
- c. The prime location of the Dingli Interpretation Centre as well as the passing trade generated by the Heritage Trail; and
- d. The Dingli LC could have at least requested Lm700 as an annual sub-lease rate, the value initially quoted by the Government Property Division as the true value of the site.⁷

3.5.4. The Executive Secretary Dingli Local Council informed La Pinta Ltd that the Council established

⁶ GPD later reduced this amount to Lm100. Paragraph 2.5.3. refers.

a Lm20 annual sub-lease rate. However, this official's communication with the sub-lessee amount preceded official authorisation by the Local Council. Despite the information derived by this Investigation that the evaluation board had verbally approved this decision prior to the communication to La Pinta Ltd, such action deviates from good administrative practices as the Local Council may have either not granted its approval or suggested a higher rate.

3.6 Conclusions

- 3.6.1 This Chapter discussed a number of factors, which independently or collectively could have influenced the outcome of the call for tenders relating to the Dingli interpretation Centre. This included the establishment of this Company a few days before the call for tenders, the limited documentation within the tender documentation pertaining to the commercial side of the project as well as deviations from accepted tendering principles.
- 3.6.2. The tender notice and related documentation did not appropriately emphasise the commercial element of the project, particularly when the Dingli Local Council anticipated that this was necessary to ascertain project sustainability. This state of affairs could have potentially restricted bids for the project. This conclusion also considers that there was one sole bidder.
- 3.6.3. This Investigation did not elicit any evidence which would suggest that the timing of the setting up of La Pinta Ltd was due to insider information. Within this context, this Investigation established that there was ample information available with the public domain to enable deduction that a call for tenders from Dingli LC was to be issued.
- 3.6.4. Dingli LC maintains that the Lm20 sub-lease annual fee represents a nominal value since the immovable property will be returned to Government once the sub-lease period has elapsed. Ultimately, the LC did not have the required funds to meet the capital expenditure necessary to practically build up from scratch these derelict premises. Nonetheless, the NAO considers that the Lm20 annual fee does not reflect the true value of this prime site. The rental value was determined by the Dingli LC on the basis of compliance to tendering legislation, with the aim of retaining the sole bidder and implementing a project.
- 3.6.5. The next Chapter focuses on the sub-lease Agreement between the Dingli Local Council and La Pinta Ltd. The discussion therein analyses the extent to which this Contract balances the notion of a sustainable project and the safeguarding of Government's interests.

Chapter 4

The Sub-lease Agreement

4.1 Introduction

- 4.1.1. As required by the Devolution Agreement between the Government Property Division (GPD)⁸ and Dingli Local Council (LC), the former granted post-facto approval to the latter to sub-lease the site at tal-Veċċa to third parties.⁹ Following the tender adjudication process, the Dingli LC entered into a sub-lease Agreement with La Pinta Ltd. Through this Agreement, which was endorsed on 27 November 2007, Dingli LC transferred its obligations emanating from the Devolution Agreement to La Pinta Ltd. The sub-lease Agreement included provisions relating to the construction and operations of the Interpretation Centre for a period of 13 years.
- 4.1.2. This Investigation revealed that the sub-lease Agreement between the Dingli LC and La Pinta Ltd omits a number of clauses considered to represent best practices in such cases.
- 4.1.3. Against this backdrop, this Chapter discusses the extent to which the:
- sub-lease Agreement safeguarded Government's interests; and
 - current use is conformant with the conditions stipulated in the sub-lease Agreement.

4.2 Sub-lease Agreement

- 4.2.1. By virtue of the Agreement, dated 27 November 2007, between the Dingli LC and La Pinta Ltd, the Council surrendered by title of lease a divided portion of land at tal-Veċċa, limits of Dingli, to the selected bidder. As noted earlier, the lease was subject to the conditions specified in the 17 May 2006 Agreement between the Dingli LC and the GPD. To evaluate the degree to which this sub-lease Agreement safeguarded Government's interest, the National Audit Office (NAO) analysed this Agreement against best practice criteria devised by the Australian Audit Office and other generally accepted practices.
- 4.2.2. The contractual provisions in the sub-lease Agreement between Dingli LC and La Pinta Ltd cover key elements of what are considered as best practices such as project duration, termination arrangements and dispute resolution. However, there is no cross reference to clearly indicate

⁸ On 3 February 2017, the Lands Authority was set up by virtue of the Lands Authority Chapter 563 and the full powers previously held by the Commissioner of Lands within the Government Property Division were assumed.

⁹ Chapter 2, Section 2.6 discusses in detail the Dingli LC request to sub-let such premises.

that the terms and conditions of the sub-lease Agreement also comprise the provisions of the tender document. Consequently, a number of contractual clauses were neither included in the tender document nor in the sub-lease Agreement. Table 2 refers.

Table 2: Best practices contractual clauses

Best practices contractual clauses	Status (Omitted / Not appropriately defined / Value for money concerns)
Annual rates of sub lease	Value for money concerns
Transitional arrangements and Renegotiation of the lease Agreement	Not appropriately defined
Key personnel	Omitted
Deliverables	Not appropriately defined

4.2.3. Table 2 shows that a number of ‘best practice’ contractual clauses are not included in this sub-lease Agreement. This situation raises concerns to both the lessor and lessee. The ensuing paragraphs provide a brief explanation of each of the omitted best practice contractual clauses.

- a. **Annual rates of sub-lease** – The Dingli Local Council agreed these annual rates with the contractor during the tendering process. As discussed in the preceding Chapter, this Investigation considers the Lm20 annual sub-lease rate as nominal. This amount does not reflect market prices and further more it does not equate with the annual rent of Lm100 Dingli LC pays to GPD with respect to the devolution of the land in question. Dingli LC countered that, given the goodwill generated through this project, the LC should be in a better position to negotiate a significantly higher annual sub-lease rate, when the current lease agreement expires.

With respect to the lease amount to be stipulated, the Councillor Dingli LC (2005 – to date) asserted that in the new call for tenders the rent amount will reflect the fact that the site has a valid Malta Environment and Planning Authority (MEPA) permit and is renovated, irrespective whether La Pinta Ltd is granted the tender or otherwise. The NAO notes that La Pinta Ltd was only guaranteed 13 years of premises use, which therefore means that the Company’s business plan must have provided for the recovery of the initial investment within that period. The rental fee for a second lease, while taking into consideration the company’s management of the Interpretation Centre, the catering facilities and the maintenance of the public toilets, would not need to take into consideration any capital outlay, therefore the rent should be substantially higher.

- b. **Transitional arrangements** – These refer to the contractual parties’ responsibilities at the termination of the Agreement. The sub-lease Agreement stipulates that in the event that the GPD extends the original lease, La Pinta Ltd would be granted an extension under the condition then stipulated. This clause, however, raises the following issues:

- i. The tender document issued by Dingli LC did not specify whether the 13-year sub-lease could be extended.
 - ii. In the circumstances, the Dingli LC would be obliged to issue a fresh call for tenders, where the sub-lessee would have the right of first refusal. Interviews with the Mayor Dingli LC (2005 – 2013) and a Councillor Dingli LC (2005 – to date) confirmed that this is the approach intended by the Council.
 - iii. The Commissioner of Land (CoL) did not raise concerns regarding this contractual clause when granting the post-facto authorisation.
- c. **Key personnel** – Good practices demand that contracts clearly define whether the contractor is required to engage expertise to facilitate the delivery of services. In this case, correspondence between the Dingli LC and the contractor prior to the signing of the sub-lease Agreement shows that the latter agreed to engage a qualified person to facilitate tours around Dingli. Although, such a condition is not included as part of the terms and conditions of the sub-lease Agreement, the contractor has nonetheless engaged such an employee.
- d. **Deliverables** – The Agreement between the Local Council and La Pinta Ltd only refers to the provision of an Interpretation Centre, catering facilities as well as the availability of public convenience. Section 4.3 refers.

4.3 Current Site Use

- 4.3.1. The sub-lease Agreement between Dingli LC and La Pinta Ltd also reflects the conditions stipulated in the Devolution Agreement between GPD and the former. This Agreement outlines that La Pinta Ltd is to provide an Interpretation Centre, catering services as well as public convenience facilities. With the exception of reference to the maintenance of public convenience, as outlined in Table 2, the sub-lease Agreement does not suitably define the project deliverables. Furthermore, the Contract omits conditions that the parties agreed in correspondence dated 13 November 2007. Consequently, Dingli Local Council is severely constrained to benchmark accurately operations against stipulated criteria and performance indicators.
- 4.3.2. In the circumstances, this Investigation encountered similar limitations to assess the extent to which the site is being utilised in accordance with the provisions of the sub-lease Agreement as well as the correspondence dated 13 November 2007. Consequently, this Investigation can only benchmark site operations against subjectively established criteria as to what the deliverable pertaining to this project should be,¹⁰ particularly as the quality and scale of operations are not defined in the sub-lease Agreement.

¹⁰ In part, such criteria is reproduced in Table 1 within Chapter 3.

- 4.3.3. **Interpretation Centre** - Documentation available confirms that various social, cultural and educational events are organised in the premises. Events held on site included lectures, seminars, committee meetings, student visits, a book launch, walking tours, information sessions and art exhibitions. Additionally, information brochures of local fauna and flora, as well as maps of the Dingli cliffs and surrounding area are available for tourists on site. In this respect, it is clear that interpretative facilities are being offered on site. Furthermore, in May 2018, the services provided by the Dingli Interpretation Centre were recognised through an Anders Wall Award for a special contribution to the environment.
- 4.3.4. **Public Convenience** - The sub-lease Agreement stipulated that La Pinta Ltd was to keep the public convenience facilities open at all times. On the other hand, the tender document obliges that the public convenience facilities were to be available during the Centre's opening hours. This Investigation could not determine why such an ambiguity existed.
- 4.3.5. **Catering** - Various sources outlined that catering facilities were necessary to ascertain project sustainability. However, their interpretation of the extent to which the catering on site constitutes an ancillary or a primary activity deferred. Currently, there is a fully-fledged restaurant on site. However, as neither the Devolution Agreement nor the sub-lease Agreement define the scale and type of catering, this Investigation had to resort to the MEPA permit. This route did not prove less problematic since this Permit was characterised by ambiguity in the terminology used with respect to catering. This Permit states that food and drink is permitted on site as an ancillary facility. This matter will be discussed in detail in Chapters 5 and 6.

4.4 Conclusions

- 4.4.1. This Investigation revealed that the sub-lease Agreement between Dingli LC and La Pinta Ltd omits or does not adequately define a number of clauses considered to represent best practices. Moreover, there is no cross reference to clearly indicate that the terms and conditions of the sub-lease Agreement also comprise the provisions of the tender document. To this effect, this sub-lease Agreement does not fully safeguard the parties' interests.
- 4.4.2. The sub-lease Agreement does not appropriately cater for anticipated risks and eventualities concerning this venture. Moreover, this Contract omits references to conditions, which correspondence show that the parties had agreed on prior to the signing of the sub-lease Agreement.
- 4.4.3. The next Chapter focuses on the issue of the planning permit by the former MEPA.¹¹ The discussion focuses on the extent to which catering is permitted on the devolved site.

¹¹ The Planning Authority has been set up by virtue of the Development Planning Act (ACT VII of 2016) and the powers relating to Planning previously held by MEPA were assumed.

Chapter 5

MEPA Permits

5.1 Introduction

- 5.1.1. In this Chapter, the National Audit Office (NAO) sought to assess whether the development permits issued and the subsequent minor amendment procedure were conformant with applicable legislation. Moreover, the Investigation analysed whether the current site use is conformant with the permits issued by the former Malta Environment and Planning Authority (MEPA).
- 5.1.2. This Investigation found no evidence of fraud and/or corruption relating to MEPA permits namely the Outline Development Permit and Full Development Permit. On the other hand, the Investigation identified a number of shortcomings, including the ambiguity of the terminology used where the Full Development Permit did not reflect the Development Control Commission's (DCC) intentions.
- 5.1.3. This Chapter discusses these issues in accordance with the general chronology of events. To this effect, the Chapter focuses on the:
- Outline Development Permit;
 - Full Development Permit;
 - Minor Amendment to the Full Development Permit; and
 - Legal Interpretation of the Full Development Permit.

5.2 Outline Development Permit

- 5.2.1. This Investigation considers that the process for the issuance of the Outline Development Permit was regular as the procedures adopted complied with the legal framework, namely the Development Planning Act as well as MEPA internal procedures. The outline development permit seeks to establish the general principles of the project and is often a precursor to the more detailed full development permit.
- 5.2.2. The main matter elicited through the review of the process undertaken for the issuance of the Outline Development Permit is MEPA's request for the transformation of the cafeteria area into a seating area, and the restriction of food and drinks sales to the use of vending machines. Such action is tantamount to minimising as far as possible the catering element of the project. This decision aims to emphasise the interpretative element of the project. (Section 5.2.9 refers).

- 5.2.3. The approved Outline Development Permit reflected the updated plans submitted by the applicant, which plans had excluded the catering services. The forthcoming Section discusses the issue of the Outline Development Permit in terms of the application submitted by the Dingli Local Council (LC), MEPA's consultation process, MEPA's request for the revision of plans and the Authority's approval of the Outline Development Permit.

Outline Development Permit Application

- 5.2.4. On 24 September 2002, Mayor Dingli LC (1999 – 2005) and Architect Dingli LC submitted an Outline Development Permit application to demolish existing dilapidated rooms and construct an Interpretative Centre. This submission was made following discussions between councillors from the Dingli LC and MEPA. The Commissioner of Land (CoL) was notified of the intention to submit this development application.
- 5.2.5. The original proposal submitted consisted of the demolition of the two existing building and the construction of a new building, consisting of three floors, of a modern design, which occupied a larger footprint than the existing structures. The plans included a kitchenette and a large area designated for seating. This development was presented as an integral part of the Dingli Heritage Trail – described as a number of interlinked projects aimed at the enhancement and enjoyment of the archaeological, historical, landscape and scenic values of Dingli and its surroundings.
- 5.2.6. Internal MEPA documentation, pertaining to the processing of the Outline Development Permit application PA/05413/02, provided a detailed review of the site's ecological, scenic and historical importance. The site proposed for development was described in various internal reports as a 1960s military compound for a radio station connected with a radar station, with both buildings being listed as Grade 2 listed structures and the general area as a coastal and rural area of High Landscape Value. The area lying north of the panoramic road, and therefore corresponding to the site in question, was classified as a Level 3 Area of Ecological Importance (AEI), whilst the area lying south of the panoramic road, the coastal cliffs, was classified as a Level 2 AEI. At a later stage during the consideration of the application, in September 2003, the site proposed was designated as a Natura 2000 site, a candidate Special Area of Conservation of International Importance via The Flora, Fauna and Natural Habitats Protection Regulations: Legal Notice 257 of 2003, which transposed the EU Habitats Directive 92/43/EEC.

The Consultation Process

- 5.2.7. During the consultation process for this application, various authorities were requested to provide their feedback in response to the proposed development. One of the stakeholders consulted, the Malta Tourism Authority (MTA), agreed in principle with the concept of an Interpretation Centre, however, recommended the alteration of the design and scale of the proposal to better suit the rural context of the site. MTA also noted that since catering facilities were proposed, the relevant applications were to be filed with the Authority.

Revised plans

- 5.2.8. In view of the site's characteristics and MTA's comments, MEPA requested various changes to the submitted plans, thus, rendering the development better suited to its surroundings. MEPA agreed in principle with the provision of interpretative facilities, however, deemed the original design to have a negative visual impact with its natural surroundings. MEPA requested the applicant to submit new plans, incorporating a number of changes proposed by the Authority. MEPA considered that these revisions would be better suited to the landscape and connected to the military design of the existing compounds. Requested plan changes included the renaming of the 'cafeteria area' at first floor level as a 'seating area' and limiting the sale of food and drinks to the use of vending machines.
- 5.2.9. In response to the various proposed changes, on 23 March 2004 Dingli LC submitted their final plans, incorporating the requested changes. These changes included the elimination of catering services, with the sale of food and drinks on site being limited solely to the use of vending machines. Conversely, upon enquiry, Architect Dingli LC stated that cooking activity was excluded on site but not catering services. In view of these changes, Dingli LC amended the description of the proposed development to read *'restore existing structures, carry out alterations and additions to convert them to an interpretive centre'*.

Approval of the Outline Development Permit

- 5.2.10. DCC unanimously approved the Outline Development Permit on 10 January 2005. The Department of Local Governance (DLG) was informed by the Mayor Dingli LC (1999-2005) of this decision on 1 February 2005, which letter was then forwarded to the Director General (DG) Government Property Division (GPD), where the DG GPD was informed of this approval and that Dingli Local Council was awaiting the issuance of the formal permit with conditions prior to commencing works on site, as required by law.
- 5.2.11. MEPA issued the decision note for the application PA/05314/02 on 25 February 2005, granting an Outline Development Permit for the amended application, subject to several standard conditions.
- 5.2.12. On 1 March 2005, the DCC informed DG GPD that the Outline Development Permit had been issued and indicated that clearance by GPD was conditional to the validity of the permit.
- 5.2.13. At the Outline Development Permit stage, MEPA excluded catering facilities on site. Despite the revisions made to the project plans at this stage, such amendments do not imply that further changes will not be forthcoming. To this effect, the Outline Development Permit seeks to establish whether the scale and nature of a proposed development is acceptable in principle to the Authority.

5.3 Full Development Permit

- 5.3.1. Subsequent to receiving this planning permission, an applicant will require a full development permit to carry out the project. A full development permit is the most detailed and includes within the process, a 30-day period during which the public can make a submission and become a registered objector. The application is also referred to various external consultees for their feedback.
- 5.3.2. This Investigation's main concern relates to the somewhat ambiguous situation whereby the Development Control Commission documentation suggests that Class 6 activities, that is the provision of food and drink through a bar, gelateria or restaurant were prohibited. On the other hand, DCC approved a Full Development Permit, which allowed food and drink to be served at the Interpretation Centre as an ancillary activity. Chair DCC explained this variance as an oversight, and that she was under the impression that the permit issued reflected the Board's discussion, and therefore excluded catering on site. Irrespective of this, the MEPA permit issued is the legally binding document, which document allows catering facilities on site in the areas not identified with a specific use. Within this context, the Section discusses MEPA's processing and ultimately its approval regarding the application for a Full Development Permit to establish an Interpretation Centre at Dingli.

Submitted Application

- 5.3.3. On 29 January 2008, the Mayor Dingli LC (2005 - 2013) and Architect Dingli LC submitted an application, PA/00425/08, *'to demolish existing dilapidated rooms and construct an interpretative centre'*. The Council assumed responsibility for submitting this application in accordance with its obligations stipulated in the sub-lease Agreement with La Pinta Ltd.
- 5.3.4. These proposed plans, for the demolition of the existing structures and the construction of a one-storey building, deviated from those approved in the Outline Development Permit, PA/05314/02, which was for the restoration of the existing rooms and the construction of a minor extension connecting the two structures and of an additional floor.
- 5.3.5. The proposal was for a total built-up footprint of 443 square metres, a substantial increase when compared with the 196 square metres area approved in the Outline Development Permit. The plans included 14 square metres dedicated to office space, 38 square metres intended for an information area, 248 square metres allocated for a display/information area and class 6 facilities, and 15, 37 and 21 square metres for the kitchen, stores and public convenience facilities, respectively. The Planning Directorate within MEPA considered the lowering of the building to one storey, albeit with a larger footprint, and the use of traditional vernacular materials, as opposed to steel and glass, as a marked improvement on the potential visual impact of the development on its surrounding.

- 5.3.6. Correspondence between the Dingli LC and MEPA, dated 27 February 2008, presented a detailed description of the proposed Interpretation Centre. The proposed uses for this site were an information centre, a retail facility and public convenience facilities. The inclusion of a retail element was explained as a necessity to ensure that the project was sustainable, in view of the private sector involvement. Despite not mentioning catering as an official use of the building, this same document referred to the provision of catering within the proposed building. More specifically, this document outlined that, *'the catering facility form[s] an integral part of the visitor attraction, it makes the proposal sustainable and has dual use; that of an interpretation/information centre and of a catering facility, related environment improvement information will be accessible to visitors at all time in said area'*.
- 5.3.7. This Investigation also noted that reference to the use of the property for catering purposes was also found in documents retained within the MEPA file for PA/00425/08. These included a letter, dated 17 March 2009, addressed to Chair DCC, from representatives of the Dingli LC, which explained that the inclusion of catering facilities was as an essential feature, both in terms of profit as well as for the provision of a service that was not available in the area. In this letter, the applicants explained that the common area (allocated 248 square metres in the original design) was to serve various purposes related to a visitors centre, including Class 6 activities (see paragraph 5.3.2.).

Application Process

- 5.3.8. The consultation process for this application entailed that MEPA consults with other Governmental entities by informing them of the details of the proposals and requesting their comments. MTA was the only authority to voice concerns with respect to the application. Director Product Development Directorate MTA informed MEPA that the application related to development in a Natura 2000 site and was not considered compliant with the tourism policy. The tourism policy favoured construction for tourism purposes, but not at the expense of degrading environmental and socio-cultural resources. MTA requested that a thorough research be carried out on the site's history and permission was to be sought from the Superintendence for Cultural Heritage, prior to the demolition of the existing rooms. Moreover, MTA noted that the development would be attracting construction and other developments in an open countryside landscape, and in this respect a proposal for the relocation of the Centre to an alternative existing structure was put forward.
- 5.3.9. The Planning Directorate within MEPA noted MTA's adverse comments, however, also noted that on 5 December 2007, MTA had issued a Tourism Product Compliance Certificate to La Pinta Ltd, following the company's application for a licence to operate a catering establishment. In view of the conflicting views, MEPA requested clarification from MTA, and since no reply was received within the stipulated 30-day timeframe, the Planning Directorate MEPA assumed a 'no objection' to the proposal from MTA.

- 5.3.10. MEPA also sought feedback from the Superintendence of Cultural Heritage and the Natural Heritage Advisory Committee (NHAC). The Authority was informed that officers of the NHAC were going to inspect the site and would communicate further. However, the case officer's report on the development application noted that no further correspondence was received from the Superintendence.
- 5.3.11. In view of the site's characteristics, MEPA requested various changes to the submitted plans and the submission of new designs that incorporated the suggested changes to allow for a more suitable development. Requested plan changes included:
- a. Limiting the kitchen area to 15 square metres; and
 - b. Excluding the Class 6 catering facilities, in line with the Outline Development Permit.
- 5.3.12. The Dingli Local Council submitted fresh plans, which outlined that the Council implemented these proposed amendments. On 18 March 2009, the Board documented its intention to refuse the application because the use of the Class 6 facilities was not permitted in the Outline Development Permit. Subsequently to this, the applicant submitted fresh plans, as noted in the DCC Decision Sheet dated 14 April 2009, which plans were then forwarded to the Environment Planning Directorate.

Approval of Application

- 5.3.13. The DCC approved the application with a unanimous vote on 20 January 2010, which approval was based on draft permit conditions including a clause relating to food and drinks. On 21 January 2010, Head DCC Secretariat informed the Dingli LC of the DCC's decision and that the formal permit with specific conditions was to be issued in due course.
- 5.3.14. On 10 March 2010, Head DCC Secretariat informed the Dingli LC that MEPA was granting a Full Development Permit for PA/00425/08, in accordance with the approved application and plans. The development permission was subject to several conditions, including that the permit was issued exclusively for the use of the proposed structures as an indoor Interpretive Centre with ancillary facilities (stores, public toilets and area for food and drinks). No further activities were allowed on site and no outdoor activities within the undeveloped areas surrounding the proposal [Condition 2h].
- 5.3.15. This Investigation notes that between 18 March 2009 and 10 March 2010, MEPA's position changed from excluding Class 6 facilities to one that allowed catering as an ancillary facility.

5.4 MEPA permit ambiguity

- 5.4.1. Through clause 2h, the permit outlined that the site was to be exclusively an indoor Interpretive Centre with ancillary facilities (stores, public toilets and area for food and drinks). This Investigation considers that the phrasing of this clause is somewhat vague, particularly with respect to the terms 'food and drink' and 'ancillary'. These two terms led to internal discussions

within MEPA and ultimately influenced the catering licence issued by MTA.

Food and drink

5.4.2. The ambiguity on the meaning of the phrase food and drink is evidenced through correspondence involving MEPA, La Pinta Ltd and MTA regarding the issue of a second-class snack bar.¹² The following refer:

- a. On 27 July 2011, Planning Enforcement Officer MEPA wrote to Mayor Dingli LC (2005 - 2013) advising that the use of the premises had to be limited only to that of an Interpretative Centre, and that any other use falling under Class 6 of the Use (Classes) Order was not authorised. Planning Enforcement Officer MEPA explained that in the circumstances, the use of the place as a restaurant/bar could be subject to enforcement action if such activity commenced on site. In this letter, reference was made to verbal communication exchanged with the person who claimed to be the operator of the premises. Case documentation, as well as witness interviews, confirm that MEPA did not follow-up this threat of enforcement action. This Investigation considers the inconsistency with respect to this issue as indicative of broad lack of clarity and poor internal communication.
- b. On 28 October 2011, approximately 18 months after the issuance of the planning permit, Chief Executive Officer (CEO) MEPA wrote to Chair DCC querying the permit conditions. This query followed correspondence from MTA, querying permit conditions, specifically regarding the placing of tables and chairs, during the application process for the issuance of an MTA catering licence. CEO MEPA noted that the Full Development Permit granted for PA/00425/08 included a kitchen but did not indicate the place where tables and chairs could be placed and that the permit conditions specifically referred to an approval of an area for food and drinks. CEO MEPA interpreted the permit as allowing some sort of provision of food and drinks and requested Chair DCC to indicate whether his interpretation was correct and if so, indicate the area where food and drinks could be served.
- c. Chair's DCC reply indicated that Class 6 facilities were excluded from the plans and that no area could be used for the serving of food and drinks because the building was not a restaurant. Conversely, with the same correspondence, the Chair DCC indicated that the Full Development Permit allowed "very limited use of food and drinks", though no specific information regarding the nature of such use was provided, except the fact that this did not refer to the serving of food and drinks as the building could not be a restaurant. In her meeting with the NAO, Chair DCC explained that this limited use of food and drinks referred to an area, ancillary to the Interpretation Centre, which area could include vending machines, where one could sit down and eat. No further replies to the aforementioned letter were found on file. At this stage of the correspondence, it was already evident that there were problems with the interpretation of the planning permit.

¹² Issues related to La Pinta Ltd application for a second-class snack bar licence will be discussed in the next Chapter.

- d. In its quest to apply for a catering licence, on 3 November 2011, Director La Pinta Ltd emailed MTA, copying in Assistant Director Planning MEPA and Unit Manager Planning MEPA referring to the communication, which had taken place during the previous four months. In this correspondence, La Pinta Ltd submitted a plan showing the placement of tables and chairs within the Interpretation Centre. This plan included six tables placed between the area designated as kitchen and stores and the multipurpose area, as shown in the Plan, attached at Appendix I.
- e. On 7 November 2011, Assistant Director Planning MEPA wrote to MEPA CEO and Director Licensing & Enforcement MTA, copying in Unit Manager Planning MEPA and noted that the placing of tables and chairs as indicated in the plan forwarded by Director La Pinta Ltd was acceptable for the Planning Directorate. This was considered compliant with Condition 2h of Permit PA/00425/08 in view that the tables and chairs were ancillary to the primary use of the premises as an Interpretation Centre. The correspondence indicated that MEPA deemed MTA's proposal for the placement of tables and chairs acceptable.

5.4.3. The foregoing shows a high degree of ambiguity, particularly within MEPA, as to whether the Full Development Permit allowed the provision of food and drink. Further complications relate to the scale of food and drink permissible. This Investigation has not elicited evidence to explain clearly the discrepancy between the DCC's intention for the project and the actual Full Development Permit issued. This situation implies a lack of communication and coordination within MEPA at the moment that the draft permit was prepared and at the point that the DCC voted in relation to the sanctioning of this development. Documentation shows that the unanimous vote within the DCC related to a draft of the permit which contained clause 2h – the provision that permitted food and drink on site.

5.4.4. Clause 2h is in itself a broad statement, which is subject to interpretation. Interviews under oath with MEPA officials confirmed that full development permits usually refer to the activities allowed on site. Chair DCC also agreed that the permit should have been worded more clearly.

Ancillary

5.4.5. Condition 2h of PA/00425/08 prescribed an area for food and drinks as an ancillary facility to the main site use as an Interpretation Centre. This Investigation also considers the term 'ancillary facilities' as vague. The word ancillary can be defined as subsidiary, supplementary or providing support to a main function. However, the Full Development Permit does not attempt to define the term ancillary with respect to the catering facility and its respective scale. MEPA's choice of terminology in this specific permit rendered the permit subject to varying interpretations.

5.4.6. For practicality sake to maintain the chronological order of events, legal interpretation as to whether the Full Development Permit allowed catering facilities on site will be discussed in Section 5.6.

5.5 Minor Amendment to the Full Development Permit

- 5.5.1. The correspondence received at NAO alleged that the minor amendment application dated 8 June 2011 submitted by the Mayor Dingli LC (2005 – 2013) and its subsequent processing by MEPA was not transparent. It was further alleged that the principle of transparency was encroached upon, as Mayor Dingli LC (2005 – 2013) did not inform other Council members of this application. Moreover, it was alleged that the submission of this application in the Mayor Dingli LC's (2005 – 2013) name constituted a conflict of interest. This Investigation, however, did not elicit any evidence to substantiate any of these allegations.
- 5.5.2. Article 12 of Legal Notice 514 of 2010 allows for minor amendment requests to be made by the same architect and applicant of the original application to alter approved drawings and documents of development permissions. The legislation presents a number of criteria, which amendments must fulfill in order to be eligible for processing and approval through the minor amendments procedure. The criteria include that the amendment does not alter the permit conditions, affect the overall form or nature of the development, result in a development that no longer accords with the character of the surrounding area or involve a change of use or change the scale of the development. On 8 June 2011, an application for a minor amendment to permission PA/00425/08 was submitted by Mayor Dingli LC (2005 - 2013) and Architect Dingli LC. The proposed minor amendment was for the installation of an underground LPG gas storage tank. The documentation available on file does not indicate the justification presented by the applicant for requiring an LPG gas tank on site, nor does it indicate that any clarifications were requested by MEPA from the applicant. MEPA officials were queried as to the uses of an LPG gas tank and responses received stated that such a tank could be used for the operation of an area for food and drinks and also for heating purposes. The architect's drawings showing the proposed amendment were dated 16 December 2009, indicating that preparatory work for the permit amendment request was being carried out before the issuance of the permit PA/00425/08 at the beginning of 2010. This minor amendment was approved on 13 June 2011.
- 5.5.3. On enquiry, this Investigation confirmed that this minor amendment application was in line with MEPA's legal framework, as outlined in the preceding paragraph. This Investigation acknowledges that such a procedure is more expedient than processing a full development application.
- 5.5.4. Despite the fact that Mayor Dingli LC (2005 - 2013) indicated on the minor amendment application that he was acting on behalf of the Dingli LC, it was noted that the minutes of the Dingli LC meetings for the period 2010 - 2011 made no reference to the application, amendment approval, installation or use of the Liquefied Petroleum Gas (LPG) gas tank. The only possible reference was a minute recorded during the 19 July 2011 Council meeting, where Mayor Dingli LC (2005 - 2013) made reference to the Dingli Interpretation Centre and informed the Council that the Contractor had carried out some modifications over the previous days. However, the minute made no mention of LPG gas tank or the fact that a MEPA application had been submitted to obtain permission to carry out this modification.

- 5.5.5. Nonetheless, Councillor Dingli LC (2005 – to date) confirmed to the NAO that the Council was aware of this application. Moreover, the same official pointed out that the Council minutes were not a transcript of what was actually discussed during the LC meeting. The foregoing implies that while the Council minutes did not specifically refer to this issue, it does not necessarily exclude the possibility that the Council discussed the matter.
- 5.5.6. Allegations received at NAO implied a conflict of interest as the Mayor Dingli LC (2005 – 2013) submitted the minor amendment application under his name rather than that of Director, La Pinta Ltd. However, this Investigation counters this allegation since:
- a. LN 514 of 2010 outlines that a minor amendment application can only be made by the same architect and applicant of the original application, unless the change of architect and the change of applicant procedures are followed. Therefore, it was more expedient and practical for the Dingli LC to submit this minor amendment application.
 - b. The sub-lease Agreement between Dingli LC and La Pinta Ltd stipulated that development applications are to be submitted by the former at the latter's expense.
 - c. As such, it is a regular and routine administrative practice that the Mayor submits applications under his name in conformity with the Local Councils Act.¹³ This Act stipulates that the Mayor shall have the legal and judicial representation of the Council together with the Executive Secretary.

5.6 Legal interpretation of the Full Development Permit

- 5.6.1. As discussed earlier within this Chapter, the reference to an area for food and drink in the Full Development Permit created uncertainty as to whether catering facilities were allowed on site and consequently whether MTA could issue a second-class snack bar licence.¹⁴ It is not standard practice for MTA to consult with MEPA on every single application for a catering licence. However, the difficulties encountered to interpret the Full Development Permit issued by MEPA on 10 March 2010 necessitated consultation. MTA enquiries instigated two MEPA decisions. Firstly, on 7 November 2011 MEPA agreed to MTA's catering license restrictions that the area for the placing of tables and chairs for the serving of food and drinks was to be limited to 22 square metres. Secondly, following legal advice received by MEPA on 1 October 2016, this Authority interpreted its Full Development Permit to allow unrestricted use of the site, in so far as the placing of tables and chairs as well as the type and quality of food served was concerned.
- 5.6.2. On 1 October 2016, Executive Chairman Planning Authority (PA) obtained legal advice regarding condition 2h of the permit in question, PA/00425/08. This legal advice confirmed that the Centre is operating as an Interpretation Centre and thus, the principal activity exists.

¹³ Chapter 363, Clause 27

¹⁴ The Class 6 classification, presently Class 4c or Class 4d, is reserved for catering establishments, irrespective of whether the facility was equipped for cooking.

5.6.3. Legal Advisors PA stated that they had reservations as to the interpretation given by the Chair DCC to Lawyer MEPA on 28 October 2011, following the issuance of the permit. In addition, they added that the intention behind the DCC's decision had to be clear from the permit itself. They noted that the permit omitted the limitations on the serving of food and drinks mentioned in email correspondence by Chair DCC.

5.6.4. The legal advice obtained also stated that if the permit issued did not reflect the DCC's decisions or intentions, MEPA could have invoked Article 77 of Chapter 504 and adjusted the situation. However, the Authority did not deem it necessary to take this action. Due to time prescription, MEPA is unable to resort to corrective measures. Legal Advisors PA also referred to the relevant legislations regulating developments during the time of the issuance of the permit, namely, Legal Notice 53 of 1994, as amended through Legal Notice 70 of 2000 and Legal Notice 59 of 2004. The aforementioned legislations provided the following definition with respect to Class 6 activities:

'Class 6- Food and Drink

Use of any of the following:

- a) Sale of Hot or cold food or drink for consumption on or off the premises
- b) Gelateria
- c) Bar
- d) Restaurant'

5.6.5. Legal Advisors PA interpreted the term 'area for food and drinks' as an area which allowed any of the above-mentioned uses. Thus, Legal Advisors PA concluded that the permit was clear, in that it allowed food and drinks in the approved area, as an ancillary activity to the main operation of the site as an Interpretation Centre.

5.6.6. The Executive Chair PA, informed MTA in writing on 12 October 2016, that following a review of the permit, the premises were allowed to operate as an Interpretation Centre and also serve food on site. In this respect, the premises were also a restaurant. Moreover, tables and chairs could be placed in any part of the premises, which was not identified as having a specific use in the MEPA-approved plans, and that there were no limitations on the amount of tables and chairs, nor the type and quality of food served on site. Legal advice sought by NAO confirmed the legal advice provided to MEPA, in that the permit in effect allows catering on site.

5.7 Conclusion

5.7.1. This Chapter presented a chronology of events, which questioned the interpretation of the Full Development Permit issued by MEPA with respect to the Dingli Interpretation Centre. This Investigation did not uncover any evidence that this process was subject to fraud and corruption. However, the various interpretations given to this permit from within and beyond MEPA, imply weak work practices, communication and coordination within this Authority.

Moreover, this resulted in a permit, which did not reflect the DCC's intentions, despite having a draft permit including condition 2h, at their disposal during the approval stage.

- 5.7.2. The first issue that needs to be clarified relates to the importance of the permit itself. Once a permit is issued, it is binding. In this case, it does not transpire that any conditions or limitations were imposed on the permit with reference to food and drinks. On the contrary, the permit declared that the premises were to be used *“as an indoor interpretive centre with ancillary facilities (stores, public toilets and area for food and drinks). No further activities shall be allowed on site and no outdoor activities within the undeveloped areas surrounding the proposal.”* This specific clause excluded any activities from being allowed other than the Interpretive Centre with ancillary facilities. One of the ancillary facilities listed was an area for food and drinks and no conditions or limitations were made in this regard. Therefore, having a restaurant on site is deemed to be within the parameters of this permit.
- 5.7.3. Previous correspondence before the issue of the permit led to discussions within MEPA that the restaurant was to be removed. However, the permit itself did not exclude this. If this was the DCC's intention then the permit should have clearly indicated a limitation or exclusion (example food and drinks for employees).
- 5.7.4. This Investigation has not elicited evidence to explain the variance between the DCC's intention of the project and the actual Full Development Permit issued. Such a situation shows inadequate work practices as well as lack of communication and coordination within MEPA at the moment that the draft permit was prepared and at the point that the DCC voted in relation to the sanctioning of this development.
- 5.7.5. The next Chapter discuss MTA's role in issuing a catering licence with respect to the Interpretation Centre. The main focus of the discussion reemphasises the ambiguity of the Full Development Permit issued by MEPA, namely the extent to which food and drink were allowed on site.

Chapter 6

MTA catering licence

6.1 Introduction

- 6.1.1. As Dingli Interpretation Centre included catering facilities, it required both a Tourism Policy Compliance Certificate (TPPC) as well as an operating licence for a second-class snack bar to be issued by the Malta Tourism Authority (MTA).
- 6.1.2. This Investigation revealed that La Pinta Ltd adhered to legal requirements by submitting a catering application to the MTA. Moreover, MTA reservations regarding the allowed operations on site were due to the ambiguity in the terminology used in the MEPA permit. In view of the foregoing, this Chapter seeks to determine the degree to which:
- La Pinta Ltd followed established practices to obtain both a Tourism Policy Compliance Certificate and an operating licence;
 - MTA provided MEPA with consistent feedback during the consultation process for the Full Development Permit; and
 - the planning permit's ambiguous terminology influenced MTA's internal processes.

6.2 Dingli Interpretation Centre Catering Licences

- 6.2.1. MTA licensing procedures require that the applicant seek approval for catering facilities in two stages. Firstly, the applicant requests MTA approval prior to the submission of the Full Development Permit through a Tourism Policy Compliance Certificate. This is necessary since such a certificate is a prerequisite for the granting of a MEPA Full Development Permit. In essence, the TPPC confirms that MTA finds no objection to the proposed development.¹⁵ Secondly, MTA considers again the application on the basis of further documentation submitted by the applicant. The purpose of the second review relates to MTA actually licensing catering facilities on the site through an operating licence. This Office noted that La Pinta Ltd adhered to such requirements.

¹⁵ The TPPC is valid only for development purposes and does not constitute an operating licence.

- 6.2.2. In this regard, on 2 December 2007, Director La Pinta Ltd submitted an application for a catering establishment licence for 'La Pinta Snack Bar', which was to be located at the site of the Dingli Interpretation Centre. The proposed classification was that of a second-class snack bar and a second-class bar. Three days after the submission of the application, MTA granted La Pinta Ltd the TPCC.
- 6.2.3. Following the granting of MEPA's Full Development Permit, MTA proceeded with its processing of La Pinta's application for an operating catering licence. This Investigation noted that that La Pinta Ltd submitted the required documentation necessary for the issuing of an operating licence.

6.3 Communication between MTA and MEPA

- 6.3.1. During the different stages of the Full Development Permit procedure, MTA provided inconsistent feedback to MEPA. On the one hand, MTA approved the Tourism Policy Compliance Certificate in December 2007, which clearly stipulates that the proposed development adhered to Government's Tourism Policy. On the other hand, MTA expressed reservations regarding the degree to which the development adhered to Government's Tourism Policy during the MEPA Consultation phase in June 2008. However, MTA did not follow this issue up with MEPA. Consequently, MEPA interpreted the absence of communication by due date as MTA having no objection to the proposed development.

6.4 MTA operating Licence

- 6.4.1. MTA's catering establishment regulations (SL 409.15) stipulate the requirements to operate catering facilities. MTA allows an establishment to obtain an operating licence, which reflects a lower status than that actually being operated by the applicant. In this case, the applicant applied for a Second Class Snack Bar while it is clearly evident that the establishment aimed to provide restaurant facilities. MTA does not consider such a situation an anomaly of the licence obtained on the basis that the minimum requirements within the operating licence would be fulfilled. MTA's Enforcement Officers ascertain compliance through on-site inspections.
- 6.4.2. In the case under Investigation, the indirect reference to catering facilities in the Full Development Permit created uncertainty to the degree to which MTA could issue a second-class snack bar licence.¹⁶ It is not routine for MTA to consult with MEPA on every single application for a catering licence. However, the interpretation difficulties concerning this permit prompted communications between the two Authorities.
- 6.4.3. The MEPA permit outlined that the site was to be exclusively an indoor Interpretive Centre with ancillary facilities (stores, public toilets and area for food and drinks). As outlined in Section 5.4, MTA initially interpreted the terminology of the permit to mean that 'limited' food and drink

¹⁶ The Class 6 classification, presently Class 4c or Class 4d, is reserved for catering establishments, irrespective of whether the facility was equipped for cooking.

could be served on site. MTA's understanding of 'limited' relates to confining the serving of food and drink to a 22 square metre area. The permit ambiguity led to discussions between the two regulatory authorities and the applicant between July 2011 and November 2011.

- 6.4.4. To this effect, MTA granted a catering operating license for a second-class snack bar on 7 November 2011. However, the licence was issued with special conditions, which stipulated that the MEPA approved plans had to be adhered to and that the area for the placing of tables and chairs for the serving of food and drinks was to be limited to the aforementioned 22 square metres.
- 6.4.5. It is evident that the terminology used in the Full Development Permit complicated matters as outlined by the ongoing discussion between the two regulatory authorities and the applicant as well as the number of site-visits by MTA Enforcement Officers until 2016. Indeed, both the former CEO MTA as well as the Executive Chairman Planning Authority were involved in the discussions. As noted in Section 5.6, in part, these discussions triggered MEPA to seek legal advice in October 2016 on the interpretation of the planning permit – namely with respect to clause 2h relating to the serving of food and drink as an ancillary facility. On the basis of this legal advice MEPA informed MTA that from a Full Development Permit point of view, the premises were allowed to operate as an Interpretation Centre and also serve food on site. In this respect, these premises could also operate as a restaurant. The tables and chairs could be placed in any part of the premises, which was not identified as having a specific use in the MEPA-approved plans, and that there were no limitations on the amount of tables and chairs, nor the type and quality of food served on site.
- 6.4.6. Subsequently, the MTA revised its licence, and withdrew the previous restrictions relating to the confined area for tables and chairs.

6.5 Conclusion

- 6.5.1. This Chapter mainly outlined that the ambiguity in the Full Development Permit conditions influenced the period taken for MTA to issue a catering licence to La Pinta Ltd for a second-class snackbar. This anomaly also influenced the MTA licence condition whereby the serving of food and drinks was initially restricted to 22 square metres. This Investigation re-emphasises that work practices, communication and coordination within and between the public authorities involved in this case were not always effective. Further complications arose through the terminology used in the MEPA permit. A case in point relates to the subjective terminology used in the Permit under Investigation, which influenced the stakeholders' opinion, as to the type and scale of operations allowed on site.
- 6.5.2. The ensuing Chapter discusses the extent to which the utilisation of EU funds was compliant with the relevant regulations and procedures. The Investigation also comprises a discussion of the allegation received that the Mayor Dingli LC (2005 – 2013) has a personal interest in La Pinta Ltd venture.

Chapter 7

Other Matters

7.1 Introduction

- 7.1.1. This Chapter presents findings in respect of other matters, which were reviewed by the National Audit Office (NAO) as part of this Investigation. Allegations were made to this Office in respect of a conflict of interest of Mayor Dingli LC (2005 - 2013). These allegations related to a personal interest in the Interpretation Centre and was in receipt of €2,000 monthly fee from activities through the Centre.
- 7.1.2. Allegations were also made in respect of European Union (EU) Funds utilised for the Dingli Interpretation Centre. This Centre utilised funds falling under the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development (EAFRD).
- 7.1.3. This Investigation did not uncover any evidence to give credence to the allegation that Mayor Dingli LC (2005 - 2013), has a personal interest nor that he is in receipt of €2,000 monthly from activities through the Interpretation Centre. Additionally, this Investigation concluded that La Pinta Ltd justly obtained and utilised EU funds in connection with the Dingli Interpretation Centre.
- 7.1.4. In view of the above, this Chapter discusses the extent to which the allegations made concerning:
- Mayor Dingli LC's (2005 – 2013) personal interest in this project were confirmed; and
 - EU funds obtained by La Pinta Ltd were justly obtained and utilised.

7.2 Alleged private interest of the Mayor Dingli LC (2005 – 2013)

- 7.2.1. The allegations received at NAO referred to a situation, which raised suspicions that Mayor Dingli LC (2005 – 2013) had personal interests in the venture. The allegation contends that the site was being irregularly used as a restaurant. It was alleged that the Mayor Dingli LC's (2005 – 2013) inaction 'raise suspicions' that this official had a private interest in the commercial activities at this site. The allegations also stated that during an informal meeting, the Shadow Minister for Home Affairs and National Security (2013 - 2017) conveyed information that Mayor Dingli LC (2005 – 2013) "was receiving around €2,000 per month from the restaurant business" and that this was "an open secret in Dingli". The author of these allegations also claimed that he himself had been informed by several other people that Mayor Dingli LC (2005 – 2013) had a hidden interest in the restaurant.

7.2.2. This Investigation followed up these allegations through interviews under oath as well as a review of relevant documentation some of which were attached to the correspondence raising these allegations. These Investigations did not uncover evidence to substantiate these allegations. The following refers:

- a. Mayor Dingli LC (2005 – 2013) categorically denied such allegations and stated that he is not involved in this venture in anyway. This official claimed that the author of the allegations has a personal agenda. While Mayor Dingli LC (2005 – 2013) stated that he has no conflict of interest in this venture, he further highlighted that every decision regarding the Interpretation Centre was taken collectively by the Dingli LC and not unilaterally. Mayor Dingli LC (2005 – 2013) also pointed out that the previous Council carried out the preliminary work relating to this project.
- b. Councillor Dingli LC (2005 – to date) admitted that there was hearsay similar to the allegations received by the NAO. However, the Councillor stated that he was never in receipt of supporting evidence.
- c. Shadow Minister for Home Affairs and National Security (2013 – 2017) confirmed personal concerns regarding this venture and was aware of hearsay relating to Mayor Dingli LC's (2005- 2013) alleged involvement in this project. However, he denied mentioning any amount of money that Mayor Dingli LC (2005 – 2013) was allegedly receiving through this venture. He also confirmed to this Office that he is not privy to evidence to support such allegations.
- d. Director, La Pinta Ltd, stated under oath that Mayor Dingli LC (2005 – 2013) is not involved in this venture and never received any money from his company in respect of this project. Director La Pinta Ltd also noted that the capital outlay for this venture was raised through his personal savings, which in instances was supported by loans. The Interpretation Centre also benefitted from EU funding.

7.2.3. This Investigation explored various avenues to determine the extent to which the allegations made can be substantiated or otherwise. This review did not uncover any evidence to support the claim that Mayor Dingli LC (2005 – 2013) was personally involved or in receipt of income through this venture.

7.3 EU Funds obtained in respect of the Dingli Interpretation Centre

7.3.1. La Pinta Ltd was granted funds under ERDF. However, the company was also allocated funds from EAFRD through an application submitted by the Dingli LC.

ERDF Funds

- 7.3.2. La Pinta Ltd applied and obtained funds with the project entitled 'D Cliffs Interpretation Centre' under the third call of the Grant Scheme for Sustainable Tourism Projects by Enterprises. This Scheme fell under the Sustainable Tourism Priority in the Operational Programme I (OPI): Investing in Competitiveness for a Better Quality of Life, which scheme was co-financed by the EU's ERDF. Funding provided under this scheme was intended for projects having a substantial impact on sustainable tourism.
- 7.3.3. Entities eligible for funding under this Scheme were those planning to implement a project related to tourism and its development in Malta. The economic activities of the enterprises eligible for funding included, but were not limited to:
- a. Accommodation and catering;
 - b. Enterprises carrying out activities of travel agencies, tour operators and tourist assistance activities;
 - c. Recreational, cultural and sporting activities;
 - d. Language schools, educational institutions targeting tourists;
 - e. Venues and retail outlets; and
 - f. Information service facilities.
- 7.3.4. In its application form, La Pinta Ltd indicated that the company was set up for the purpose of implementing the 'D Cliffs Interpretation Centre' project, which was to provide an innovative approach to sustainable tourism and environmental protection. It was to support the local economy by creating employment opportunities and utilising local and seasonal produce, thus increasing the marketability of local products.
- 7.3.5. The applicant, La Pinta Ltd, stated that the proposed project was complementary to the Dingli LC projects sponsored by the EAFRD, which were to commence the following year. The Heritage Trail was the main project of the Sustainable Development Strategy DINGLI 2020, which trail included the Interpretation Centre as its hub. Services to be offered from the Interpretation Centre included bicycle hire, internet services and IT and audio-visual equipment, information on public transport timetables, places of interest, events and material on seasonal flora and fauna, the dissemination of trail maps, as well as catering facilities.
- 7.3.6. Detailed descriptions of the activities falling under specific intervention areas and a timeline for each activity were presented by the applicant. Three quotes were presented for each activity and the cheapest option was consistently quoted as the chosen supplier. One exception was noted in this regard, with respect to the cash point and software supplier.
- 7.3.7. The total eligible cost quoted for this project was €175,038 excluding Value Added Tax (VAT). This amount falls below the maximum threshold of €400,000 excluding VAT, designated for small-sized enterprises as outlined in the Guidance Notes.

- 7.3.8. This Investigation notes that the project description presented by La Pinta Ltd in the application form did not clearly outline the scale of the catering element planned on site as the main emphasis related to policy development, environmental management and the educational and cultural elements of the project. In effect, at present, the catering element is a very prominent activity of the Dingli Interpretation Centre. However, the Guidance Notes pertaining to these funds specified catering facilities as one of the economic activities eligible for funding.
- 7.3.9. All applications were evaluated on the Eligibility and Selection criteria as approved by the Monitoring Committee for the Structural Funds 2007-2013. The Evaluation Procedure consisted of three phases, namely the Eligibility Criteria, the Preliminary Evaluation and the Strategic Evaluation. Applications were ranked based on the mark obtained and funding was provided to the higher ranking projects until funds were exhausted.
- 7.3.10. On 16 January 2012, La Pinta Ltd was informed of the outcome of the evaluation, whereby the applicant was informed that the project had been approved for funding under the Scheme and would be granted a co-financing rate of 50 per cent of the net eligible costs. This letter noted that upon signing the agreement the beneficiary would be undertaking a commitment to finance 100 per cent of the project prior to attaining a 50 per cent reimbursement of the eligible costs.
- 7.3.11. The Agreement between the Tourism and Sustainable Development Unit within the Ministry for Tourism, Culture and the Environment and the beneficiary, La Pinta Ltd, was signed on 1 June 2012. By virtue of this Agreement, the company was granted the sum of €64,353, which funds were to be utilised by the beneficiary for the sole purpose of completing the project in accordance with the Structural Funds Regulations, and as identified and approved in the Evaluation Procedure and outlined in the approval letter. The Agreement stipulated that the funds were to be disbursed to the beneficiary in accordance with the established payment procedures for this Scheme and that the amount granted was equivalent to 50 per cent of the eligible costs necessary to finance the project. La Pinta Ltd agreed to various conditions, including the adherence with all the conditions laid down in the MEPA permit submitted with the application form.
- 7.3.12. The amount granted, as established in the initial grant agreement, was modified in a number of addendums, which ultimately resulted in a lower amount, the sum of €58,523, being committed to La Pinta Ltd. Deductions in the funds originally committed were motivated by changes in item prices, or changes in product requirements, items purchased not utilised on site and marketing material not abiding to publicity requirements.
- 7.3.13. This Investigation noted that no deductions were effected with respect to the non-adherence to the agreed project timeline, which adherence was listed as one of the necessary obligations in the grant Agreement. Despite indicating February 2012 as the project completion date for the whole project, documentation on file indicates that the actual completion date of the Centre was 10 August 2013.

7.3.14. For this project, three separate claims for reimbursement were submitted. For every claim form the relevant substantiating documentation in respect of the copies of invoices and claim form were found on file. According to the Guidance Notes, the repayment of the co-financing was to be effected in three tranches, with disbursements of 40, 40 and 20 per cent respectively. Table 3 below shows the actual claims for reimbursements made by La Pinta Ltd and actual payments issued by the Intermediate Body, which in effect are not in line with the repayment percentage tranches established in the Guidance Notes. In fact, the first claim for reimbursement resulted in a repayment of 15 per cent more than the originally agreed on payment. When queried in this respect, Director General (DG) Ministry for European Affairs and Equality (MEAE) stated that payments to the beneficiaries were undertaken in line with the actual expenditure as well as the parameters allowed by the Scheme. This Investigation also noted that the total reimbursements, amounting to €57,664, vary slightly from the project funding quoted in the last Addendum signed, that is €58,523. This Office could not reconcile these amounts, and did not pursue this issue further with the PPCD due to the immateriality of the discrepancy.

Table 3: Total reimbursements

Claim Number	Date of Claim Submission	Date of Approval	Reimbursed Amounts (€)	Actual Repayment Percentage (%)
1	26/09/2012	30/11/2012	31,758	55
2	26/12/2012	31/01/2013	20,186	35
3	10/08/2013	18/09/2013	5,720	10
			57,664	100

7.3.15. All payments made by La Pinta Ltd to suppliers were made in methods conformant with the conditions in the Grant Agreement. Costs which were refunded were duly analysed by the Intermediate Body prior to reimbursement, and also subject to reviews during number of site visits and on-the-spot checks, conducted on different dates and focusing on different project aspects. Of note is the fact that as at the last inspection check, conducted on 8 October 2014 by representatives of the Intermediate Body and the Managing Authority, some required documentation was missing and that the plaque in the entrance area did not include the required itemised list of the co-financed activities under the ERDF Scheme. The inspection report noted that a follow-up was to be conducted by the Intermediate Body in respect of certain aspects. When queried in this respect, DG MEAE confirmed evidence of interpretative events held at the Centre were provided to the Managing Authority, thus closing off the need for further follow-up. Changes in quotations submitted at reimbursement stage, in comparison to quotations submitted at the Grant Agreement stage, were also duly authorised by the relevant entity. No modifications to the initial proposal were made to the project or any of its activities. However, a number of suppliers, who had originally submitted quotations to the activities were replaced. Relevant receipts of approval from the Intermediate Body for such changes were not found on file.

EAFRD Funds

- 7.3.16. Funds under EAFRD Schemes were attained by the Dingli LC in respect of the Dingli Heritage Trail under Measure 313 of Priority Axis 3 (Encouragement of Tourism Activities) and Measure 323 of Priority Axis 3 (Conservation and upgrading of the Rural Heritage) of the Rural Development Plan for Malta 2007-2013, co-financed by the EAFRD. These funds had originally been scoped out of this Investigation. However, on review of the Dingli LC meeting minutes dated 10 December 2010 it was noted that Mayor Dingli LC (2005 - 2013) had suggested that the Council request the Paying Agency to allocate €10,000 to the Interpretation Centre to purchase necessary equipment, which included a DVD player, a touch-screen computer and related equipment. This minute instigated a review of documentation retained by the MSDEC by this Office to identify whether any of those funds were actually utilised to buy equipment for the Interpretation Centre.
- 7.3.17. The Dingli LC was granted the sum of €390,693 by way of funds under Measure 313 of Priority Axis 3. This amount was split between the EAFRD contribution, which amounted to 75 per cent of the grant amount and the remaining 25 per cent, which was the Malta Government Contribution. A review of the documentation retained by the MSDEC relating to Measure 313 indicated that, in effect, claims amounting to a total of €11,776 consisted of assets relating to the Dingli Interpretation Centre. These items were submitted in a claim form dated 16 September 2011 by the Dingli LC and consisted of lighting, video and audio equipment.
- 7.3.18. With respect to Measure 323 the Paying Agency granted the Dingli LC the sum of €47,710 by way of funds, which were to be used solely for the purposes of completing the Dingli heritage project in accordance to EAFRD regulations and as approved in the approval letter. With respect to funds awarded under Measure 323, none of the claims submitted related to expenses incurred for the Interpretation Centre.

IAID Investigation

- 7.3.19. The Internal Audit and Investigations Department (IAID) carried out a financial investigation following a formal request for investigation made by a private individual on 27 July 2015, addressed to the Parliamentary Secretary responsible for EU Funds and the 2017 Presidency (2013 – 2017), who was also Mayor Dingli LC (2005 - 2013). This request demanded an investigation into the use of EU EAFRD funds by the Dingli LC, for the installation of an information board and bollard, allegedly in violation of a planning permit for the upgrading of a pedestrian walk-way in an area in the area known as il-Qaws, as part of the Dingli Heritage Trail (PA/03107/09). The funds under the IAID investigation referred to those secured under Measure 313 of Priority Axis 3 for the installation of custom-made wrought iron signposts. The scope of the Financial Investigation Directorate (FID) investigation was to ascertain whether the Dingli LC used EU funds appropriately and whether the information boards and bollards installed along the Dingli Heritage Trail were in adherence to MEPA regulations. Additionally,

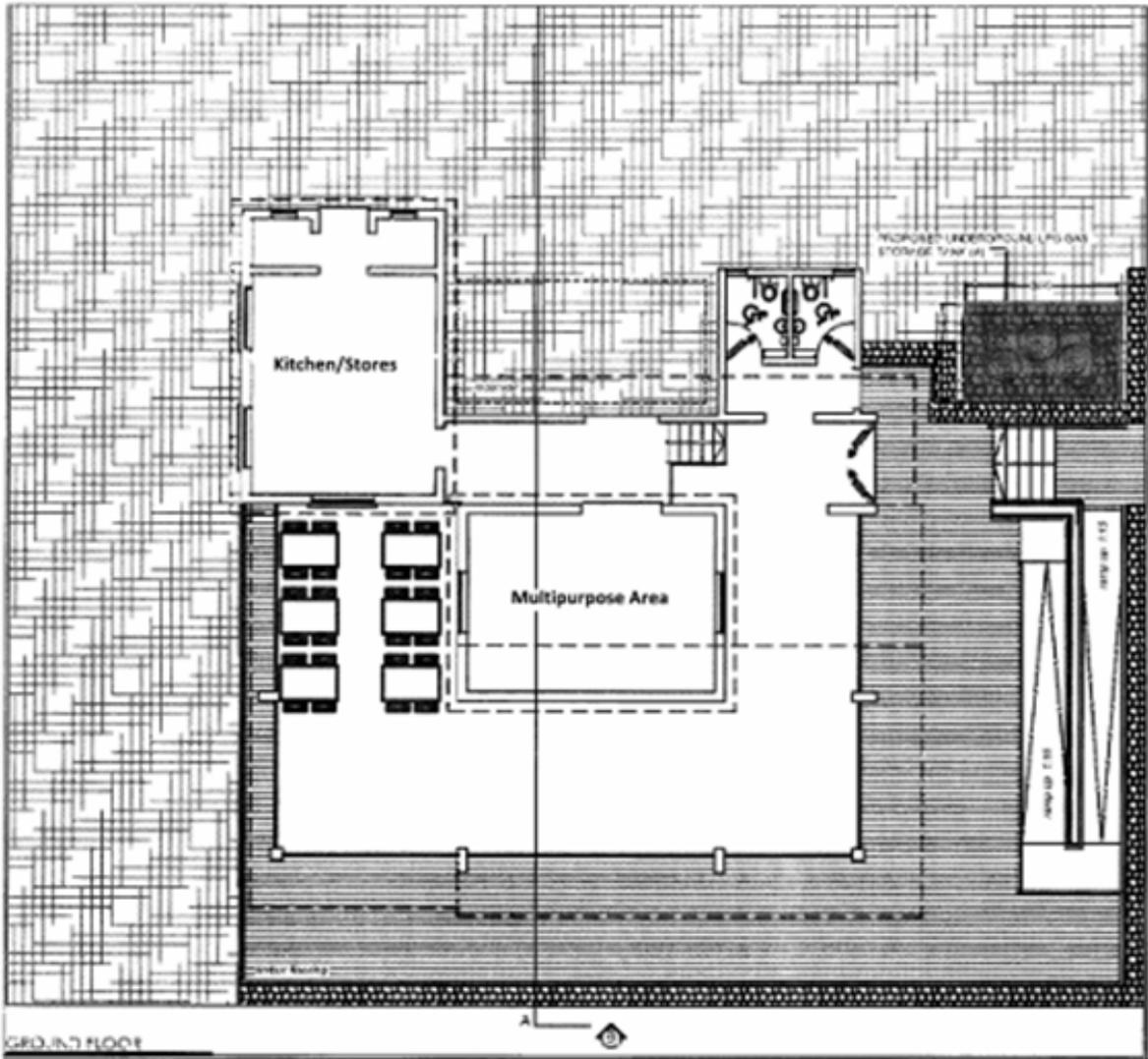
the FID sought to establish whether the Dingli LC had installed the information boards and bollards on instructions given by the Managing Authority EAFRD.

- 7.3.20. From the Investigation, the FID concluded that the Dingli LC had utilised EU and national funds appropriately. Moreover, the placement of information boards and bollards along the heritage trail were, according to MEPA, in line with regulations and therefore no misuse of public funds was established in this respect. The FID also established that the Dingli LC had not installed the information boards and bollards on instructions from the Managing Authority. In fact, the Managing Authority had requested the Dingli LC to install publicity plaques in accordance to established guidelines.

7.4 Conclusion

- 7.4.1. This Investigation did not elicit evidence to give credence to allegations that the Mayor Dingli LC, (2005 – 2013) has a personal interest and was, or is, in receipt of around €2,000 monthly from Interpretation Centre activities. In view of the seriousness of the allegations, this Investigation sought to corroborate the results of the various sources of evidence undertaken to determine whether Mayor Dingli LC (2005 – 2013) acted irregularly or unethically. The various avenues explored in this regard did not yield evidence in this regard.
- 7.4.2. In addition, this Investigation concluded that notwithstanding a number of minor shortcomings with respect to administrative processes, EU funds granted to La Pinta Ltd in respect of the 'D Cliffs Interpretation Centre' were justly obtained and utilised.

Appendix 1: Plan submitted by La Pinta Ltd



Appendix II Bibliography

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Laws of Malta, Chapter 12. Code of Organisation and Civil Procedure.

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